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In most of the States there are in existence, statutes providing for what is known as "struck juries" or "special juries," in place of the ordinary jury. Such statute exists in Minnesota. An effort was made in the recent case of Lommen v. Minneapolis Gas Light Co., 68 N. W. Rep. 53, to induce the Supreme Court of Minnesota to declare the act invalid upon the ground that it is in violation of the constitutional provision that "the right to trial by jury shall remain inviolate." The court rendered a very elaborate opinion, and the decision of the majority, together with the dissenting opinions of the minority, constitute a valuable addition to the law upon the subject of jury trials. The court said that since no American constitution declared what was meant by a jury trial, the question was an historical one, and that history revealed that the essential attributes of a jury trial were the number (12), impartiality and unanimity, and that if the law in question violated any of those attributes it must be that of impartiality. The mode of selecting a jury is only the means to the end, and it can be changed or altered at the will of the law-making power, so long as this fundamental attribute of impartiality is not overstepped. Two grounds for the unconstitutionality of the act were urged. First, that it eliminated the element of lot; and, second, that there was no right of peremptory challenges. But the court said that the element of lot was unknown to the common law, since the sheriff selected the jury from the freeholders; nor was there any such thing at common law as a peremptory challenge in civil cases. Both of these were American innovations. Special or struck juries were well known at the common law, their origin being so ancient that the date could not be ascertained, and they were specially provided for by a number of English statutes. The court also made an exhaustive search as to similar statutes in other States, and found an abundance of them, the constitutionality of which had never been questioned. The court concluded its opinion by saying: "In view of such a consensus of opinion on the part of the legislatures, and impliedly of the courts and bar of the country, that statutes of this kind do not impair the common law right of trial by jury as known and understood in American constitutional law, we would not be warranted in holding this act unconstitutional. With the policy of the law we have nothing to do. If conditions have so changed that it results in abuses such as counsel suggest, the remedy is with the legislature." There are two strong dissents from this decision, and Judge Canty does not hesitate to express himself very freely about what he designates the "one-man power." The dissenting opinions proceed upon the theory that the courts have no right to go back to the most ancient common law in the determination of this question. The common law is progressive. The standard of impartiality may be different to-day from what it was in the reign of the Georges; and while the rule that impartiality is the test must be permitted to stand, the end of the nineteenth century, and the spirit of American jurisprudence—the "American common law"—demands that that attribute be weighed in finer scales than the unequal balances in use when the sheriff possessed an almost unlimited authority.

Our readers will probably recall a recent decision of the Supreme Court of Missouri on the subject of "special juries," upon which we commented at the time of its rendition—42 Cent. L. J. 191, 198, 345. The question presented differed from that in the Minnesota case, in the fact that the point as to the validity of such an act was not raised, though its constitutionality was impliedly admitted. The point involved in the Missouri case was as to the power of courts to adopt rules governing the selection of "special juries." It is interesting to note, in view of the controversy in the Minnesota case, that the Missouri court held that "special juries", as distinct from a common jury, were a feature of the common law, and that the legislature by adopting it must be presumed to have done so with a full understanding of the meaning, force and effect "which that expression had acquired during its long sojourn at common law," and that it is neither in the power of law makers nor courts to take away the right to a special jury, or by the operation of rules force a litigant who lawfully asked for such a panel to

accept anything else. In an earlier Missouri case constitutional objections to such statute were very properly overruled. But with this exception the validity of such statute has not been questioned, and the courts and the bar everywhere seem to have assumed that the constitutionality of such laws was beyond question.

NOTES OF RECENT DECISIONS.

INSURANCE — TITLE OF INSURED — EXECUTORY CONTRACT OF PURCHASE.—In Loventhal v. Home Ins. Co., 20 South. Rep. 419, the Supreme Court of Alabama decides that a vendee of lands under an executory contract of purchase, holding a bond for title upon payment of the price, a portion of which has been paid, is an owner in fee-simple within the condition of a policy providing that it shall be void if the subject of the insurance is a building on ground not owned by the insured in fee-simple, citing and approving the following cases: Hugh v. Ins. Co., 29 Conn. 10, 76 Amer. Dec. 581; Gaylord v. Ins. Co., 40 Mo. 13, 93 Amer. Dec. 289; Ins. Co. v. Martin, 40 N. J. Law, 586, 29 Amer. Rep. 271; Wooddy v. Ins. Co., 31 Gratt. 362, 31 Amer. Rep. 732; Davidson v. Ins. Co., 71 Iowa, 532, 60 Amer. Rep. 818; Smith v. Ins. Co., 91 Cal. 323, 25 Amer. St. Rep. 191; Ins. Co. v. Tyler, 16 Wend. 385; Johannes v. Fire Office, 70 Wis. 196; Dupreau v. Ins. Co. (Mich.), 43 N. W. Rep. 585; Ins. Co. v. Dunham, 117 Pa. St. 460; Lewis v. Ins. Co., 29 Fed. Rep. 496; Ellis v. Ins. Co., 32 Fed. Rep. 646; Pelton v. Ins. Co., 77 N. Y. 605.

EMINENT DOMAIN—CONSTRUCTION OF SEWER—INJURY TO LAND—LOSS OF LATERAL SUPPORT.—The Supreme Judicial Court of Massachusetts has recently had before it a very peculiar case—Cobat v. Kingman, 44 N. E. Rep. 344. A city built a sewer in a public street, the soil of which opposite the plaintiff's premises consisted of about three feet of gravel filling, upon about ten feet of peat and silt, below which was very fine sand and silt on quicksand. The soil of the plaintiff's premises was of the same nature, and part of the same strata. The underlying sand contained a great deal of water, and while the sewer trench, which was twenty-six feet deep, was being dug, it was kept free from water by buckets and pumps. A great deal of the substratum of water-logged sand ran into the trench, from the plaintiff's premises, and the surface, being deprived of its subjacent and lateral support, cracked and settled, and his buildings were injured. Upon these facts it was held that the city was liable to him for damages. Cabot v. Kingman, 44 N. E. Rep. 344. Justices Holmes, Knowlton and Lathrop dissented, on the authority of Popplewell v. Hodkinson, 4 L. R. Exch. 248 (1869), where it was decided that the owner of land, had no right to the support of subterranean waters, and could not recover damages from one who, by draining his own land, withdrew such support from another, and caused his land to subside, and on the ground that a quicksand which flowed so freely as to be raised by a pump ought to follow that analogy.

NEGOTIABLE INSTRUMENT—PROMISSORY NOTE—EXCHANGE—NEGOTIABILITY.—In Nicely v. Commercial Bank, 44 N. E. Rep. 572, the Appellate Court of Indiana decides that a note payable "with exchange and cost of collection" is not negotiable. This conclusion is in accord with the weight of authority. Many cases hold that, even though the principal sum to be paid is certain and fixed, if the obligation provides for "exchange on New York," that renders the sum to be paid indefinite and uncertain; hence the obligation is non-negotiable under the law merchant. Lowe v. Bliss, 24 Ill. 168; Bank v. Bynum, 84 N. C. 24; Cazet v. Hirk, 4 Allen (N. B.), 543; Nash v. Gibbon, *Id.* 479; Read v. McNulty, 12 Rich. Law, 445; Bank v. Strother (S. C.), 6 S. E. Rep. 313; Russell v. Russell, 1 MacArthur, 263; Fitzbarris v. Leggatt, 10 Mo. App. 529; Flagg v. School Dist. (N. D.), 58 N. W. Rep. 499; Bank v. McMahon, 38 Fed. Rep. 283. And the following cases hold that a stipulation in the obligation providing for "exchange on New York" does not destroy the negotiability of the obligation: Smith v. Kendall, 9 Mich. 240; Johnson v. Frisbie, 15 Mich. 286; Leggett v. Jones, 10 Wis. 34; Hastings v. Thompson, 54 Minn. 184, 55 N. W. Rep. 968. In Bank v. Newkirk, 2 Miles, 442; Saxton v. Stevenson, 23 U. C. C. P. 503; Hughitt v. Johnson, 28 Fed. Rep. 865; and Culbertson v. Nelson (Iowa), 61 N. W.

Rep. 854, it was held that the mere stipulation, "with exchange," destroyed the negotiability of the obligation. On the other hand, in Hill v. Todd, 29 Ill. 101; Clauser v. Stone, *Id.* 114; Whittle v. Bank (Tex. Civ. App.), 26 S. W. Rep. 1106; Bullock v. Taylor, 39 Mich. 137; Orr v. Hopkins, 3 N. M. 45, 1 Pac. Rep. 181, it was held that a stipulation "with exchange," does not destroy the negotiability of the obligation. The Indiana court says that "while we are impressed with the reasoning contained in many of the cases cited wherein it is held that promissory notes containing stipulations of this character should be held to be negotiable if those who deal therein accept them as such, that the law merchant is simply the general custom accepted and acted upon by common consent of those trading and doing business together, so if paper passes from hand to hand in the general routine of business, and is accepted as negotiable, the law should recognize it as such, nevertheless we are bound to take notice of the fact that the negotiability of such obligations is quite often disputed, and, when questioned, the holdings of the courts as to their negotiability are inharmonious. The line of cases holding that the provision "with exchange" introduces into the obligation an element of uncertainty which destroys its negotiability seems to meet the approval of at least a majority of this court, and, inasmuch as we have no precedents on the question in this State, we will follow that line of the adjudications."

THE TREATIES OF THE UNITED STATES AND ALIEN LAND LAWS OF ILLINOIS AND OTHER STATES OF THE UNION.

§ 1. *The Statutes of Illinois.*—The common law governed the territory constituting the State of Illinois, while part of Virginia and of Indiana Territory, and was continued in force by act of December 13, 1812, adopting for Illinois Territory all the general laws of Indiana Territory in force therein on March 1st, 1809, the birthday of Illinois Territory. By an act of September 17, 1807, the common law was established in Indiana Territory, but an act of the same day removed all alien disabilities. After Illinois had become a State an act of February 4, 1819, re-enacted the common law and the alien act of 1807, while the act of September 1, 1827, enabled aliens to take and hold lands in this State by purchase, devise and descent, and to transmit them to their heirs, as natural born citizens might do, granting to an alien widow her dower, as if she or her husband were natural born citizens, and repealing the act of 1819, so as to save rights acquired under the same.[1] Sec. 48, "Wills & Test.," in force July 1st, 1829, provides that any alien or naturalized citizen may take and hold lands in this State by purchase or descent and transmit them to his heirs, whether citizens or not, as natural born citizens can do, and the next of kin of any intestate who leaves lands in this State, whether citizens or not, shall inherit them accordingly, saving to the widow such dower or privileges as allowed by laws in other cases. On March 3, 1845, apparently by mistake, it was enacted that all aliens residing in this State may take, by deed or will or otherwise, lands and any interest therein, and transmit the same to their heirs, whether citizens or not, in a manner as natural born citizens might do, as if such alien were a citizen, and it shall be no objection to any persons having an interest in such estate that they are not citizens but they shall in all things be placed on the same footing as natural born citizens and actual residents of the United States. On February 17, 1851, the same section was re-enacted after striking the obnoxious words "residing in this State." Sec. 4, ch. 90, Rev. St. of 1845, repealed the act of 1829, and the act of 1845, saving its second section concerning dower right, was repealed by the act of 1851. An act of June 16, 1887, in force July 1, 1887, "in regard to aliens and to restrict their rights to acquire and hold real estate and to provide for the disposition of the lands now owned by non-resident aliens," and amended by an act of July 1, 1891, enables any alien to acquire title to lands in the State by deed and to convey a good title to citizens before escheat proceedings are instituted by the State; but all non-resident aliens, firms of aliens, and foreign corporations shall be incapable of acquiring title to or holding such lands by descent, devise, purchase or otherwise, except that the[2] heirs of aliens, having acquired lands under former laws, and the heirs of aliens acquiring lands under this act, may take them by devise or descent and hold them for 3 years, if of the age of

[1] Colgan v. McKean, 4 Zabr. 566; Stemple v. Herminghouser, 3 Iowa, 408; Jones v. Minogue, 29 Ark. 637; Yeo v. Marcereau, 18 N. J. L. 387, 27 Chic. L. N. 256.

[2] A bill proposed in 1895 to add here: "Alien heirs of citizens and" failed to pass through the legislature.

21 years at the time of acquiring title, or for 5 years if under that age at that time (thus benefiting female heirs) and if such lands are not sold at the expiration of that time to *bona fide* purchasers for value, or such alien heirs have not until then become actual residents of this State, such lands shall escheat to the State. Minor aliens residing in the United States may take lands in this State by purchase and hold them for 6 years after they might have declared their intention to become citizens, and if at the end of said six years they have not become citizens of the United States such lands shall escheat to the State under escheat proceedings. Alien residents of the United States who have declared or shall declare their intention of becoming citizens, and every alien female, who shall *bona fide* become an actual resident of the United States, shall "thereupon" be able to take and hold land in this State for 6 years for him or her and his or her heirs forever, as if they were natural born citizens of the United States, but without power to lease or devise[3] the same, unless actually residing in this State; provided that such alien at the time of acquiring title, shall file for record, if a male, a copy of his declaration of intention, and if a female, her affidavit that she is *bona fide* a resident of the United States; and if a male alien has not within said six years after declaring his intention become a citizen, or, if then living, has not sold the land to a *bona fide* purchaser for value, it shall revert to and become the property of the State to be sold under escheat proceedings and the proceeds to be paid to the State. All persons not parties to such proceeding shall be forever barred after 10 years from the judgment of sale, but may within that time, or if disabled by infancy or insanity, within 5 years after removal of such disabilities, show their title and recover the land, if unsold, or the proceeds, less cost of suit. The act protects vested rights by granting to alien non-residents of the United States owning land in this State on July 1st, 1887, the power to dispose of the same during life to *bona fide* purchasers for value, and to take security for the purchase money, as if they were citizens; but if they or their heirs again obtain title to said lands under foreclosure suits, or any alien, holding a lien or interest in land acquired before that date, or acquiring after that date a lien or judgment for any liability created before or after that date, or becoming a purchaser at a sale under such lien or judgment, shall hold the title only for 3 years, and, failing to sell the land within that time to *bona fide* purchasers for value, the land shall escheat to the State. In all cases a presumption of bad faith shall arise if an alien, after filing his declaration of intention, shall for 3 months after he might lawfully do so, fail to complete his citizenship.

§ 2. *The Treaties of the United States with Foreign Powers.*—To complete our review of the laws of Illinois, concerning alien disabilities, it is necessary to refer to a number of treaties between the United States and foreign powers, containing provisions concerning the disposition of lands descending to citizens of foreign powers. It will be sufficient to consider treaties of the United States with the principal European powers.

I. The following European States have no treaties with the United States concerning this subject: Baden, Belgium, Denmark, German Empire and Alsace-Lorraine, Great Britain, Greece, Netherlands, Sweden and Norway.

II. European States having treaties with the United States concerning this subject, but which are of doubtful construction: 1. *France.* Art. VII, treaty of 1853, contains the following provision: "In all States of the Union whose existing laws permit it so long and to the same extent as said laws remain in force, Frenchmen shall enjoy the right of possessing real estate by the same title and in the same manner as citizens of the United States. As to the States of the Union by whose existing laws aliens are not permitted to hold land, the president engages to recommend to them the passage of such laws as may be necessary for the purpose of enforcing this right." These provisions guaranteed only rights then secured by the laws of the States then permitting aliens to hold land. The president of the United States has no control over the legislature of the States, and his promise of recommendation was no undertaking that such laws should be passed.[4] This treaty expressly recognizes the right of States to enact disabling laws at any time, and property rights depend on the statutes existing when such rights vest.[5] Art. VII, French treaty, 1853, further provides: "In like manner, but with the ulterior right of establishing reciprocity in regard to possession and inheritance, France accords to citizens of the United States the same rights in its territory, in respect to real estate and

[3] The Act of 1887, Sec. 10, repeals "the Act of 1851 and all other acts and parts of acts" in conflict with its provisions; and, therefore, also Sec. 2 of the Act of 1845 concerning dower, which, however, still appears on our statute books. The prohibition of "devise" is clearly a misprint for "demise" in its strange connection with "lease." 1 Starr & C. 1896: Aliens. Sec. 11, § 1: "no contract or lease by which lands are *devised* or leased by any alien · · · for the purposes of farming, cultivation," etc., "shall contain any provision requiring the tenant · · · to pay taxes on said lands." These mistakes are contained in the first print of the bill proposing the act, and have been enacted. See, also, the opposite mistake in 50 Alb. L. J. 272, § 15.

[4] *Re* Amat, 18 La. Ann. 403; Prevost v. Greneaux, 19 How. 1, Taney, Ch. J.: "It is proper to say that the obligation of the treaty, and its operation in the State, after it was made, depend upon the laws of Louisiana. The treaty does not claim for the United States the right of controlling the succession of real estate in a State, and its operation is expressly limited to the States of the Union whose laws permit it, so long and to the same extent as these laws shall remain in force."

[5] Hunt v. Hunt, 37 Me. 333; *Re* Amat, 18 La. Ann. 403.

inheritance, as are enjoyed there by its own citizens." By this clause France reserved the right to retaliate if French citizens are not permitted to hold lands in the United States descended to them, and is justified in discriminating between citizens of the States of the Union and in according the right of holding lands in France to citizens of those of our States who permit Frenchmen to hold lands, and to deny this right to citizens of such States as disable Frenchmen from holding lands in their territories.[6] No other treaty with France refers to the subject, and her citizens are therefore not protected against the alien laws of Illinois.[7] 2. *Great Britain.* Art. IX, Jay's Treaty, 1794, provided that British subjects who now hold lands in the United States shall continue to hold them according to their estates and titles therein, and may grant, sell and devise them as if they were natives; and neither they nor their heirs, shall, as regards said lands and the legal remedies incident thereto, be regarded as aliens. This treaty provided only for titles then existing; titles acquired since that treaty can derive no aid from it,[8] unless the claimant can show that he held the title at the time the treaty was made.[9] Although under these adjudications this treaty can hardly be regarded as terminated by war, as claimed on the part of Great Britain,[10] yet the treaty is antiquated. Since 1794 no treaty with Great Britain refers to the subject so that Englishmen are not protected against the operation of our alien law.[11] 3. *Swiss Confederation.* Art. V, treaty of 1850, in force November 8, 1855, grants to heirs "or other successors" such term "as the law of the State in which the land is situated will permit" to sell the same, and protects therefore also devices and dower rights, but since our statute grants no term, Swiss citizens are not exempt from the operation of our alien laws. In Hauenstein v. Lynham,[12] the laws of Virginia expressly referred to treaty rights, without granting a term for the sale of land descended under their provisions, but otherwise recognizing such rights. Held, it would be a solicism to deny to Swiss heirs a term to sell the land; that the treaty had left it to the State to enact a limitation; until that had been done, there was no restriction preventing them from acquiring title to lands by descent, and that the evident intention of the treaty was to grant "some term" and not "none." Jecker v. Magee,[13] where this treaty was involved, is a very peculiar case. One of the issues was whether the treaty operated from the time it was concluded and signed in 1850, or when ratified and confirmed in 1855. In the former case the treaty, being in force in 1850, superseded the treaty of 1848; in the latter case the treaty of 1848 continued in force until 1855. Descent was cast in 1853. It was decided the treaty of 1850 became of force in 1855, and that the claimants were therefore protected by the treaty of 1848 which granted them 3 years to sell the lands, and that the treaty of 1855 "had no retroactive effect to divest a title vested by the law of Kentucky in 1853 in the defendant widow, on the death of her husband." Although this decision, given in 1869, finds that the treaty of 1848 was in force in 1853 as supreme law of the land, yet it holds that the title was affected only by the law of Kentucky and by it vested in the widow, but that complainants would have been entitled to the land "if they had brought suit in time." "Bringing suit" seems to be a new mode of acquiring title to real estate. The estate of the alien claimants being terminated by the treaty limitation of three years, the effect of the decision was to prevent an escheat to the State and to give the title to the widow. But since it does not appear that escheat proceedings were instituted against the Swiss heirs, it will be seen from the following that the decision was entirely erroneous, since the title of an alien once vested can only be taken away by escheat proceedings. There can be no doubt that in such case the title vests under the treaty and not by "bringing suit."[14] Under the case of Hauenstein v. Lynham, it seems doubtful whether the act of 1887 is void as to Swiss citizens as in conflict with the plain intention of the Swiss treaty to grant "some term" and not "none,"[15] but it will be noticed later that this

[6] Conn. Gen. Stat. 1888, ch. 5, § 15, expressly enables "any Frenchman" to take and hold lands in the State as long as reciprocity on the part of France is guaranteed.

[7] See below under 3 Swiss Confederation, and note 15; De Geofroy v. Riggs, 10 S. C. Rep. 295, 133 U. S. 258; Prevost v. Greeneaux, 19 How. 1.

[8] Orser v. Hoag, 3 Hill, 79; Blight v. Rochester, 7 Wheat. 535; Megrath v. Robertson, 1 Desaus. Eq. (S. C.) 449.

[9] Harden v. Fisher, 1 Wheat. 300; Crane v. Reeder, 21 Mich. 66; Beavan v. Went, 155 Ill. 592; Society v. New Haven, 8 Wheat. 464, 494; Orr v. Hodgson, 4 Wheat. 453; Hughes v. Edwards, 9 Wheat. 489; Carver v. Jackson, 4 Pet. 1; Craig v. Radford, 3 Wheat. 594; Jackson v. Clark, *Ib.* 1; Watson v. Donnelly, 28 Barb. 659; Jackson v. Decker, 11 Johns. 418, 422; Shanks v. Dupont, 3 Pet. 242; Jackson v. Lunn, 3 Johns. Cas. 109; Kelly v. Harrison, 2 Johns. Cas. 29. See 2 Whart. Dig. Int. Law, § 150*a*, p. 160.

[10] Wharton, Dig. Int. Law, II, §§ 135, 137*a*, pp. 63, 160; Fox v. Southack, 12 Mass. 143.

[11] Crane v. Reeder, 21 Mich. 66; Trimbles v. Harrison, 1 B. Monr. 145; Beavan v. Went, 155 Ill. 592; Love v. Hadden, 3 Brevard, (S. C.) 1; Wharton, l. c. p. 160. See Hanrick v. Hanrick, 54 Tex. 101, 61 *Ib.* 596.

[12] 100 U. S. 483.

[13] 9 Wall. 32.

[14] The same mistake occurs to the court in Elmondorff v. Carmichael, 14 Am. Dec. 86, where it was held that an alien would acquire title to land "by naturalization" while in truth he had acquired title by grant during alienage, as in the Yaker case it was acquired by descent. Crane v. Reeder, 21 Mich. 67; Orr v. Hodgson, 4 Wheat. 453; Hunt v. Hunt, 37 Me. 333; Haven v. Yaker, 9 Wall. 32; Jost v. Jost, 1 Mackey, 487; Ware v. Hylton, 3 Dall. 271.

[15] Where a native of Baden, who became a Swiss citizen by marriage before descent cast, set out in her bill for partition that she was a citizen of the German

treaty belongs to a period peculiar for the reason that the power of the federal government to make treaties on this subject in derogation of State laws was doubted. Yet since the Illinois act permits certain aliens to take and hold land for a specified time, it is extremely doubtful whether the right to hold land under this treaty or that of France and Brunswick could be *bona fide* denied to citizens of these countries. 4. *Netherlands*. Art. VI, treaty of 1782, contains nearly the same provision as the treaty of France of 1800, Art. VII, under which it was held in Chirac v. Chirac, 2 Wheat. 259, that Frenchmen take a life estate, notwithstanding disabling laws of Maryland, limiting them to ten years. This treaty expired in 1795 during the war between the Netherlands and France, by reason of the destruction of the sovereignty of the Netherlands.[16] In University v. Miller,[17] it was held: "Courts cannot take judicial notice of the expiration of this treaty, and this question must be decided by the executive." Courts now take judicial notice of the existence or formation of sovereign powers.[18] A person now claiming under this treaty would be at a loss to prove himself a subject of the power with which said treaty was concluded, and which vanished from the face of the earth in 1795, when the government with which this treaty was concluded was overthrown, one form of government followed the other, until in 1810 Napoleon annexed the whole country to France, whereby all its subjects became French citizens and the country a French province. Its sovereignty was destroyed until 1813 when William I. became King of the Netherlands and the present treaties with that country are concluded by "His Majesty, the King of the Netherlands," while the sovereign in 1782 was "Their High Mightinesses the States General of the United Netherlands."[19] No treaty protects citizens of the Netherlands. 5. *German Empire and Alsace Lorraine*. There is no treaty in existence between the United States and the German Empire, referring to our subject.[20] But some German States, now composing the Empire, concluded treaties with the United States before the erection of the empire in 1871, and which are not impaired by the establishment of that federal government, because it did not destroy the sovereignty of those States.[21] The imperial district of Alsace Lorraine, recovered by Germany from France in 1871, stands in the same relation to the German Empire as the District of Columbia to the United States,[22] and being exclusively governed by federal laws, only the treaties of the German Empire are applicable to that district, whose citizens are, therefore, not protected against our alien laws. In regard to Germans their rights as subjects of particular German States, not as subjects of the German Empire must be determined, a fact overlooked sometimes.[23]

III. European States Whose Citizens are protected by Treaty. 1. German States. In determining the political *status* of German citizens it is essential to regard the political history of the German Empire. The Duchies of Luneburg, and of Hesse (Nassau) and the Kingdom of Hanover were merged in Prussia in 1866, and their treaties with the United States became extinct by reason of the destruction of their sovereignty. Their citizens are now citizens of Prussia, and protected by the treaty with that country concluded in 1828.[24] Citizens of some German States are protected by treaty,[25] while others are not protected by treaty.[26] 2. Italy. Art. XII, Treaty of November 23, 1871, and Serbia, Art. II, Treaty of December 27, 1882, provide "as to real estate the citizens of the two

Empire, and defendant pleaded in bar her alienage and that she was a citizen of Baden, which was not denied and judgment given against her, because Baden has no treaty with the United States, she cannot, upon bill of review, set up her true citizenship, although her power of attorney to her solicitor stated thats he resided in Basle (Switzerland). This case shows the importance of correctly ascertaining the citizenship in general, and in relation to German citizens in particular. She lost her property and the opportunity of a judicial construction of the Swiss treaty. Schaefer v. Wunderle, 154 Ill. 577. 144 Ill. 40. As to construction of this treaty, see, also, Jost v. Jost, 1 Mackey, D. C. 492.

[16] Treat. & Conv. p. 1235.

[17] 3 Dev. (N. C.) L. 193, (1831).

[18] Greenleaf, Ev. I, § 4.

[19] 1 Kent Comm. p. 215.

[20] Wunderle v. Wunderle, 144 Ill. 40.

[21] *Re* Thomas, 12 Blatch. 370; Wunderle v. Wunderle, 144 Ill. 56.

[22] Webster, Citizenship, 209, Man. 6th Const. Conv. N. Y. 1894, p. 259, Const. German Empire.

[23] The reporter in Matter of Beck, 31 N. Y. St. 965, in his syllabus says the heirs in that case were protected as "residents of the German Empire," while in fact they were protected as citizens of Prussia under its treaty of 1828, the protection of residents being unknown to any treaty regulating our subject. The same mistake occurs in 50 Alb. L. J., 274, § 27.

[24] Matter of Beck, 31 N. Y. St. 965. See, also, annotations to the treaties with those countries. Treat. & Conv. Sep. Ed.

[25] Bavaria, treaty in force Aug. 15, 1846, Art. II; Hesse Darmstadt, May 8, 1845, Art. II; Saxony, Sept. 9, 1846, Art. II, and Wuerttemberg, Dec. 16, 1844, Art. II; Frederickson v. State, 23 How. 445, all granting a term of two years "which may be reasonably prolonged according to circumstances" to sell the lands descended to their citizens. Hanseatic Republics of Hamburg, Lubeck, Bremen, June 2, 1828, Art. VII, grants three years; Siemssen v. Bofer, 6 Cal. 250; Schultze v. Schultze, 144 Ill. 290; Mecklenburg Schwerin, Aug. 2, 1848, Art. X, Prussia, March 14, 1829, Art. 14; People v. Gerke, 5 Cal. 381; Matter of Beck, 31 N. Y. St. 965, and Oldenburg, April 24, 1847, acceding to the treaty with Hannover, Art. X, grant a reasonable time.

[26] Anhalt, Baden, Wunderle v. Wunderle, 144 Ill. 40; Schaefer v. Wunderle, 154 Ill. 577; Brunswick, which has a treaty in force July 30, 1855, but which grants in Art. II, only "such term as the laws of the land will permit" none being permitted by Illinois law, see Swiss treaty above; Mecklenburg Strelitz Alsace Lorraine and all smaller principalities of the German Empire.

contracting powers shall be treated on the footing of the most favored nation." The "most favored nation clause" does not allow to collect the most favorable provisions from different treaties, but among all treaties the one most favorable must be elected as an entity, considering all other treaties as entities. There does not seem to be an adjudication on this point.[27] These treaties grant at least "two years which may be reasonably prolonged according to circumstances" and protect also devisees. The two Sicilies and Sardinia lost their sovereignty in 1861, when they were joined to Italy, and their treaties are therefore abrogated. See Treaties with Bavaria and Saxony as most favored nations. 3. Portugal. Art. XII, Treaty of 1840, and Russia, Art. X, Treaty of 1832, grant to subjects of those countries "the time fixed by the law of the land, or if no time fixed, then a reasonable time." The Russian treaty also protects devisees.[28] 4. Spain. Art. XI, treaty of 1795 grants "a reasonable time."[29] 5. Austria Hungary. Art. II, treaty of May 8, 1848, grants "two years which may be reasonably prolonged according to circumstances."[30]

§ 3. *Operation and Effect of Treaties.*—The constitutionality of such treaties and their effect as supreme law of the land is fully settled.[31] By the constitution of the United States, a treaty is placed on the same footing with acts of congress and must be judicially noticed and respected as rule of decision,[32] if made by the president in concurrence with two-thirds of the senate present,[33] duly ratified and proclaimed[34] by the president according to law, and constitutionally concluded.[35] The duty of the courts is to construe and give effect to the latest expression of the sovereign will,[36] and to follow a later treaty or acts of congress, if in conflict with prior acts or treaties, which are subject[37] to such acts as congress may pass for their enforcement, modification or repeal.[38] A federal law in conflict with a treaty is thereby repealed as against a citizen of the foreign power,[39] and a court cannot go behind a treaty when ratified and proclaimed, to inquire whether a party to it was properly represented or whether it was obtained by duress or fraud.[40] Likewise, a State constitution,[41] and *a fortiori* a State statute, in conflict with a treaty must give way to the treaty. It does not thereby become void, but fails to operate on the individual case falling under the treaty provisions,[42] and cannot affect rights of persons who are subjects of the treaty power at the time of acquiring the rights in controversy.[43] On general principles, a repeal or expiration of such treaties cannot affect vested rights,[44] while on the other hand new treaties operate only on rights existing or accru afterwards, unless otherwise provided.[45] But the rights and interests created by a treaty which become so vested that its expiration will not impair them, are only property rights, capable of sale, transfer or other disposition, and not such as are of a personal character and untransferable.[46] The treaty making power has been regarded as embracing nearly all questions arising between us and other nations, adjustible only by mutual consent, whether the subject-matter be comprised among the delegated or reserved powers.[47] In 1819, the opinion was advanced that the federal government cannot interfere with States in the

[27] Bartram v. Robertson, 122 U. S. 116. See Prussian treaty, 1828, Art. X; Wharton, Dig. Int. Law, II, § 134.

[28] Finland and Poland are parts of Russia. Maynard v. Maynard, 36 Hun, 232, 233.

[29] See Art. XII, treaty of 1819.

[30] For a collection of treaties with other powers, see Sayles Real Estate Laws of Texas, II, Art. 785*a*.

[31] Hauenstein v. Lynham, 100 U. S. 483; Orr v. Hodgson, 4 Wheat. 453; Gordon v. Kerr, 1 Wash. C. C. 322; Whitney v. Robertson, 124 U. S. 195; De Geofroy v. Riggs, 133 U. S. 258; *Ex parte* Cooper, 143 U. S. 472; 2 Whart. Dig. Int. Law, §§ 138, 201, p. 495; Treat. & Conv. Sep. Ed. p. 1238, notes.

[32] Whitney v. Robertson, 124 U. S. 190; Head Money Cases, 112 U. S. 580; Jost v. Jost, 1 Mackey, 487; Doe v. Braden, 16 How. 635; U. S. v. Pegg, 1 Cranch, 103; *Re* Metzger, 5 N. Y. L. Ob. 83; U. S. v. Rauscher, 119 U. S. 407; Foster v. Neilson, 2 Pet. 253, 314; Chew Hong v. U. S., 112 U. S. 538, 540, 565.

[33] Const. art. 2, § 2, compare the ridiculous opinion in Siemssen v. Bofer, 6 Cal. 252 (1856), with 13 Cal. 282, 283.

[34] Fellows v. Blacksmith, 19 How. 366; 2 Whart. Dig. Int. L. § 138, 6 Op. Att. Gen. 748; 2 Whart. l. c. § 131, p. 13.

[35] Hauenstein v. Lynham, 100 U. S. 483; Ware v. Hylton, 3 Dall. 199; *Re* Parrott, 1 Fed. Rep. 502; wings v. Norwood, 5 Cr. 344; Gibbons v. Ogden, 9 Wheat. 211, 6 Op. Att. Gen. 291; Doe v. Braden, 16 How. 635.

[36] Whitney v. Robertson, 124 U. S. 190.

[37] Botiller v. Dominguez, 130 U. S. 238; Horner v. U. S., 143 U. S. 570.

[38] Chae Chan Ping v. U. S., 130 U. S. 581; Steamship Co. v. Hedden, 43 Fed. Rep. 17; Williams v. The Welhaven, 55 Fed. Rep. 30; Thingvalla v. U. S., 5 L. R. A. 454; Horner v. U. S., 143 U. S. 570; Howell v. Tountain, 3 Ga. 176; Fong Yue Ting v. U. S., 149 U. S. 698; Ropes v. Clinch, 8 Blatch. 304; Cherokee v. Tobacco, 11 Wall. 616; U. S. v. Tobacco, 1 Dill. 264, 6 Op. Att. Gen. 748.

[39] Ropes v. Clinch, 8 Blatch. 304; Martin v. Hunter, 1 Wheat. 358; Whitney v. Robertson, 124 U. S. 190; The Amiable Isabella, 6 Wheat. 1, 6 Op. Att. Gen. 291.

[40] U. S. v. Old Settlers, 148 U. S. 427; Fellows v. Blacksmith, 19 How. 366.

[41] Gordon v. Kerr, 1 Wash. C. C. 322.

[42] Kull v. Kull, 37 Hun, 476; Schultze v. Schultze, 144 Ill. 290; Wunderle v. Wunderle, 144 Ill. 40; Fischer v. Harden, 1 Paine, 55; Hamilton v. Eaton, 1 Martin (N. C.), 84; Ware v. Hylton, 3 Dall. 236; Baker v. Portland, 5 Sawy. 566.

[43] Hauenstein v. Lynham, 100 U. S. 483; Wunderle v. Wunderle, 144 Ill. 40; Matter of Beck, 31 N. Y. St. 965; Orr v. Hodgson, 4 Wheat. 453; Comm. v. Sheaf, 6 Mass. 441.

[44] Chirac v. Chirac, 2 Wheat. 278; Johnson v. Elkins, 1 App. D. C. 430; Carneal v. Carneal, 10 Wheat. 181.

[45] Watson v. Donnelly, 28 Barb. 661; Johnson v. Elkins, 1 App. D. C. 430; Hunt v. Hunt, 37 Me. 333.

[46] Chinese Exclusion Case, 130 U. S. 581.

[47] 2 Wheat. l. c. § 138, p. 68.

disposition of lands in their territorial limits.[48] But this view was soon discarded and the later treaties proceed upon the doctrine that the federal government has authority to regulate by treaty all matters properly the subject of international convention, the only limit being the constitution, which expressly enjoins States from entering into contracts of this nature with foreign governments, in order to secure to all citizens the same rights and an even operation of treaties, which as federal laws are exempt from interference by State legislation.[49] About 1850 the doctrine of 1819 came in vogue again, and the treaties of that period proceed upon the principle that the federal government must not interfere with the disposition of lands by the States, a view finding its strongest expression in the treaties with France (1850), Brunswick (1854) and Switzerland (1850 ratified 1855).[50] In 1857 this doctrine was again set aside and since then it is established that the federal government has power to regulate by treaty all matters of international character, properly the subject of negotiations between our government and other nations.[51] In the absence of any treaty regulation, interference in the disposition of descents, as prescribed by State laws, is not within the province of the federal authorities,[52] and to this extent the doctrine that a State is sovereign in its limits with exclusive right to regulate tenures and devolution of land, still holds good.[53] Treaties of this character depend on their effect upon the honor and integrity of the judiciary of the contracting powers. Their interpretation of the treaty stipulations is final. Although in international matters the utmost good faith is due to the foreign contracting power in the interpretation and fulfillment of the treaty stipulations in which a liberal spirit should be observed and the most liberal construction preferred,[54] yet these treaties, before a court, derive all their force and obligation from their character as federal laws and their relation with other federal laws, while by reason of their contractual nature they must be interpreted with due regard to the intention of the parties thereto.[55] The judicial function is to be exercised not in the construction of treaties, but only in their interpretation. A court cannot alter a treaty by insertion of any clause or dispense with any of its requirements upon any motion of equity, general convenience or substantial justice.[56] An adverse claimant must show himself to be strictly within the terms of a law protecting him. Judicial comity cannot be carried so far as to work an injustice against a citizen, but the most liberal construction of a treaty cannot injure a citizen.[57] By the law of nations all treaties become internationally binding from the day of signature, unless otherwise provided. Ratification and promulgation relate back to that date.[58] But if treaties regulate and affect private property rights, their character as federal laws is in question which is not acquired by stipulation with foreign nations, or signatures of plenipotentiaries, but only by their ratification and promulgation as federal laws; and as regards such private rights an exchange of ratifications does not relate back to the time of signature so as to render the treaty operate retrospectively.[59] The treaties enumerated above generally grant to subjects of the foreign power,[60] who but for their alienage would be entitled to acquire the land in question, the right to take and hold lands in the States and Territories of the United States and in the District of Columbia,[61] notwithstanding alien disabilities of the *lex rei sitæ;* but the estate so acquired, although held by

[48] 1 Op. Att. Gen. 275.

[49] Oakey v. Bennett, 11 How. 34; Hauenstein v. Lynham, 100 U. S. 483; Watson v. Donnelly, 28 Barb. 657; De Geofroy v. Riggs, 133 U. S. 258; Const. I, 10, Art. VI; 8 Op. Att. Gen. 411; 10 *Ib.* 507; Meyer, Fed. Dec. "Treaties" § 22.

[50] Which grant such term "as the laws of the State will permit. But, see, State v. Boston, 25 Vt. 439 (1853). This change was perhaps caused by Oakey v. Bennett, 11 How. 34, and is forcibly expressed in 6 Cal. 250 (1856). *Re* Amat, 18 La. Ann. 403; Prevost v. Greneaux, 19 How. 1. which see *supra*, note 4.

[51] De Geofroy v. Riggs, 133 U. S. 258, 8 Op. Att. Gen. 411 (1857), 6 *Ib.* 658, 748; Hauenstein v. Lynham, 100 U. S. 483; *Re* Parrott, 6 Sawy. 349; Ware v. Hylton, 3 Dall. 199, 242; U. S. v. Bridleman, 6 Sawy. 251; Jecker v. Magee, 9 Wall. 32; Forbes v. Scannell, 13 Cal. 282; see Treaties & Conv. Sep. Ed. p. 1238. For constitutional limitations of the treaty power, see 2 Whart. l. c. § 131*a*. p. 24 *ff*.

[52] 2 Whart. l. c. § 138, p. 69.

[53] Wunderle v. Wunderle, 144 Ill. 40, 53; Crane v. Reeder, 21 Mich. 24; Emmendorf v. Taylor, 10 Wheat. 152, L. Ed. B. 6, p. 290, notes; Clark v. Graham, 6 Wheat. 577; Warvelle, Abstrs. p. 25; Stoltz v. Doering, 112 Ill. 234. Sec. 34, Judiciary Act, 1789, 1 Stat. 92, is not extended to suits in equity except as to treaties. Brine v. Ins. Co., 96 U. S. 627; Reno, Non-residents, p. 87, § 81.

[54] U. S. v. Amistad, 15 Pet. 595; Marryat v. Wilson, 1 B. & P. 436; U. S. v. D'Anterine, 10 How. 609; U. S. v. Auguisola, 1 Wall. 352; Prevost v. Greneaux, 19 How. 1; U. S. v. Payne, 2 McCr. 289; Hauenstein v. Lynham, 100 U. S. 483; 2 Whart. l. c. § 133, pp. 33, 36.

[55] Castro v. De Uriarte, 16 Fed. Rep. 93; Doe v. Braden, 16 How. 635; U. S. v. Amistad, 15 Pet. 518; Wilson v. Wall, 6 Wall. 83; U. S. v. Pegg, 1 Cr. 103; Strothner v. Lucas, 12 Pet. 410; 3 Op. Att. Gen. 471, 6 *Ib.* 148; 2 Whart. l. c. § 138, p. 73, § 133, p. 36.

[56] The Amiable Isabella, 6 Wheat. 1; U. S. v. D'Auterive, 10 How. 609.

[57] Crane v. Reeder, 21 Mich. 68; Dawson v. Godfrey, 4 Cranch, 321.

[58] U. S. v. Reynes, 9 How. 127, 148; Davis v. Concordia, *Ib.* 280; Prevost v. Greneaux, 19 How. 1; Chirac v. Chirac, 2 Wheat. 259; Field, Int. Code, p. 81; 1 Kent Comm. 170; 2 Whart. l. c. § 131.

[59] Field, Int. Code, 81; Gordon v. Kerr, 1 Wash. C. C. 322; Foster v. Neilson, 2 Pet. 253; Jecker v. Maggee, 9 Wall. 32; U. S. v. Sibbald, 10 Pet. 313; *Re* Metzger, 5 N.Y. L. Obs. 83; *Re* Aredondo, 6 Pet. 748; 6 Op. Att. Gen. 291, 658; 8 *Ib.* 411; 2 Whart. l. c. § 132, p. 28.

[60] Orr v. Hodgson, 4 Wheat. 453; Wunderle v. Wunderle, 144 Ill. 40.

[61] Act of March 3, 1887, 24 Rev. St. 476; Johnson v. Elkins, 1 App. D. C. 430; Jost v. Jost, 1 Mackey, 486. *Cf.* 50 Alb. L. J. 270, § 2, note 4.

the alien, as if held by a citizen,[62] is defeasible,[63] under the condition that the lands must be sold to a person able to hold them, within the times specified by the treaties. This power to sell is not a mere personal privilege or power of appointment,[64] but a property right, incident to ownership, and after condition broken, the lands do not immediately escheat to the State, but a special proceeding is the only proper mode to vest the title in the State, especially where the treaty gives a reasonable time to sell the land.[65] Capacity to take must exist at the time of descent cast. No subsequent act can confirm a title which cannot be then acquired, and the heir, if at that time unable to take cannot prevent the vesting of the title in the persons then capable of taking.[66] If a non-resident alien owner dies before having sold the land acquired under a treaty the provisions of all these treaties are general enough to warrant the conclusion that the land descends to his non-resident heirs protected by a similar treaty, although as to this point no direct adjudication can be found.[67] [This conclusion follows from some cases, which hold that such alien heir must be regarded as a citizen, holding a defeasible title.[68] In the Jay treaty with Great Britain (1794) "lands" was held to mean any estate which one may hold in land, a construction applicable to all other treaties.[69] While some of these treaties protect devisees and "other successors" others protect only heirs in their terms, and in view of our statute a treaty to protect aliens should be clear in its terms,[70] although all treaties deserve the most liberal interpretation. If it is doubtful whether an alien devisee is protected by a treaty[71] or can transmit to his heirs, direct devises of land should be avoided unless the treaty in terms protects alien devisees, although the heir at law, named as devisee, might take by descent.[72] Under a devise to an executor in trust to sell the land and turn over the proceeds to the alien, the doctrine of conversion will be applied and the statute of 1887 is not violated. The alien non-resident will be able to enforce his rights to the proceeds and to compel a sale by the executor and all questions of title or escheat will be avoided.[73] As to individual cases such treaties operate from the time of descent cast, *i. e.*, from the death of the owner of the land; then the title vests in the alien if he is then a subject of the treaty power,[74] and the treaty limitation begins to run.[75] If another estate intervenes the alien has no title until the intermediate estate is ended and until then the treaty limitation does not begin to run. The treaties generally protect only persons who would be disabled by alienage in absence of the treaty. A person taking a defeasible title under

[62] Chirac v. Chirac, 2 Wheat. 275; Kull v. Kull, 37 Hun, 476; Schultze v. Schultze, 144 Ill. 290; Society v. New Haven, 8 Wheat. 492.

[63] Schultze v. Schultze, *Ib.*; Merle v. Mathews, 26 Cal. 455; Norris v. Hoyt, 18 Cal. 217.

[64] De France v. Howard, 21 Fed. Rep. 776.

[65] Slater v. Mason, 15 Pick. 345; Wilbur v. Tobey, 16 *Ib.* 177; Mooers v. White, 6 Johns. Ch. 360; People v. Conklin, 2 Hill, 67; Wunderle v. Wunderle, 144 Ill. 40; Maynard v. Maynard, 36 Hun, 227, 230; Society v. New Haven, 8 Wheat. 492; Goodrich v. Russell, 42 N. Y. 177; Handrick v. Handrick, 54 Tex. 101; compare Siemssen v. Bofer, 6 Cal. 250, where operation was denied to a treaty upon mere sophistical grounds promptly repudiated in Schultze v. Schultze, 144 Ill. 290, and compare this decision with State v. Boston, 25 Vt. 439, which is in the other extreme. In Magee v. Yaker, 9 Wall. 32, all effect was denied to a treaty.

[66] People v. Conklin, 2 Hill, 67; Keenan v. Keenan, 7 Rich. (S. C.) 345. So in Farvell v. Enright, 12 Cal. 450, the estate vested in the resident heir alone, and the subsequent settlement of the non-resident alien heir in the State was held not to affect a title once vested in the resident heir by the death of the owner. In Ryan v. Egan, 156 Ill. 224, the Irish devisee of a naturalized citizen was excluded under the act of 1887 because he was a non-resident alien who came to the United States after the death of the testator.

[67] Maynard v. Maynard, 36 Hun, 227; Wainwright v. Low, 32 N. Y. St. 1044; Chirac v. Chirac, 2 Wheat. 276; Manuel v. Wulff, 152 U. S. 506; Purczell v. Smidt, 21 Iowa, 540; Brown v. Pearson, 41 Iowa, 481; Goodrich v. Russell, 42 N. Y. 177; Maynard v. Maynard, 36 Hun, 230.

[68] Kull v. Kull, 37 Hun, 476; Schultze v. Schultze, 144 Ill. 290; Handrick v. Handrick, 54 Tex. 101. See Ky. Gen. St. 1894, § 339.

[69] Fox v. Southack, 12 Mass. 143, 148; Fairfax v. Hunter, 7 Cranch, 603; The Comm. v. Sheaf, 6 Mass. 441; 50 Alb. L. J. 273, §§ 25, 26.

[70] See Swiss treaty: "heirs and other successors;" Saxony: "or has been devised by last will and testament;" Brunswick: "either by last will or testamentary disposition;" Russia, 1832: "whether by testament or *ab intestato*." Fox v. Southack, 12 Mass. 143; Purczell v. Smidt, 21 Iowa, 550; Ballantine v. Wood, 42 N. J. Eq. 552, 558; Montgomery v. Dorion, 7 N. H. 475; Hauenstein v. Lynham, 100 U. S. 483; Collingwood v. Pace, Lev. 59; 50 Alb. L. J. 269, § 1, note 6, § 2, note 8; but see Schultze v. Schultze, 144 Ill. 296.

[71] Stamm v. Boswick, 40 Hun, 38; Fairfax v. Hunter, 7 Cranch, 603; Hall v. Hall, 81 N. Y. 136, 8 Op. Att. Gen. 412; Chirac v. Chirac, 2 Wheat. 259.

[72] 1 Jarman, Wills, p. 75.

[73] Comm. v. Martin, 5 Munf. 117; Comm. v. Selden, *Ib.* 160; Craig v. Leslie, 3 Wheat. 563; Anstice v. Brown, 6 Paige, 448; Marx v. McGlynn, 88 N. Y. 376; Meakings v. Cromwell, 5 N. Y. 136; Noyes v. Blakeman, 6 *Ib.* 567. The doctrine of escheat will be avoided by courts of equity in the interest of justice by application of the doctrine of conversion. Where a testator devised his real estate in Virginia to his executor to be sold by him, the proceeds to be given to his alien sisters with the profits of the land, a bill filed for an escheat was dismissed. Comm. v. Martin, 5 Munf. 117. So, also, a contingent remainder could vest in an alien upon his compliance with the statutory conditions. *Cf.* 31 L. R. A. 146.

[74] Pilla v. German School Ass'n, 23 Fed. Rep. 700; Jecker v. Magee, 9 Wall. 32; Crane v. Reeder, 21 Mich. 24, 67. See Treaty with Saxony. People v. Conklin, 2 Hill, 67.

[75] In De France v. Howard, 21 Fed. Rep. 774, it was held the limitation runs from the time of settlement of the estate. This is not true where the lands descend to the heir and not to the administrator, or where the estate is solvent. The title cannot be in abeyance and devolves upon the alien, if at all, at the death of the owner.

a statute is not "incapable of holding" in the meaning of the Russian treaty (1832), and therefore does not fall under its provisions. He takes exclusively under the statute. This applies to all other treaties.[76] If lands descended under a treaty are involved in a judicial proceeding, instituted before the treaty limitation expired, all subsequent proceedings relate back to the time of bringing suit, but it has not been decided what is "a reasonable time" granted by some of the treaties.[77] If the treaty grants "a reasonable time" and a considerable time has elapsed since vesting of the title in the alien heir, the transfer of the land to a *bona fide* purchaser for value, made before escheat proceedings are instituted by the State, vests a good title, the treaties recognizing the power of sale in express terms.[78] Such title can be attacked only by the State in a direct proceeding to enforce the forfeiture under the breach of the treaty conditions, but neither collaterally, nor by any private individual.[79]

§ 4. *Aliens and Alien Disabilities.*—The act of 1887 distinguishes between non-resident aliens, aliens residing in the United States, and such as reside in Illinois. Under this act non-resident aliens are persons not citizens of the United States, and not residing in the United States; while in other States they are held to be non-residents, although they may reside in the United States, if they do not reside in the State.[80] Since act of Congress of Feb. 10, 1855, the widow of a naturalized citizen cannot be considered as an alien, if she is of a class of persons entitled to naturalization, although she may be a non-resident of the United States.[81] The naturalization of a husband confers his citizenship on his wife; the marriage may have taken place before or after naturalization, in the United States or abroad.[82] Citizens marrying alien husbands do not thereby lose their rights of citizenship,[83] if they do not remove to foreign parts without intention to return,[84] while the alien husbands do not acquire rights of citizenship by such marriage.[85] Citizenship acquired by marriage is not lost by the death of the husband nor by the mere fact of subsequent marriage to alien,[86] and a married woman may be naturalized without affecting the political *status* of her husband and without his consent.[87] In general the rule is "*partus sequitur patrem*," the child takes the father's allegiance.[88] Children born abroad to an alien cannot inherit lands in this country, although their mother was a citizen.[89] Children of an alien woman born in the United States in her wedlock with an alien follow the father's allegiance, if he is not subject to the jurisdiction of the United States, as being an ambassador, etc., at the time of birth; otherwise if he is a resident and domiciled in the United States.[90] Children by a former marriage of a citizen, who marries an alien husband, may also acquire his citizenship together with their mother; they do not lose their American citizenship, but have a double political *status*, and upon arriving at age have the right of election.[91] Minor children of an alien woman born before marriage with a naturalized citizen, whether the marriage occurs before or after his naturalization, may become citizens by virtue of such marriage.[92] The *status* of an American citizen can only be affected by express renunciation, unless there are treaties with his new sovereign regulating the subject,[93] and his

[76] Maynard v. Maynard, 36 Hun, 227, 232.

[77] Matter of Beck, 31 N. Y. St. 967 (3 years); Hauenstein v. Lynham, 100 U. S. 483 (3 years); Maynard v. Maynard, 36 Hun, 233; Chirac v. Chirac, 2 Wheat. 273.

[78] Fox v. Southack, 12 Mass. 143, 149; Pilla v. German School, 23 Fed. Rep. 700; Maynard v. Maynard, 36 Hun, 227; Settegast v. Schrimpf, 35 Tex. 323, 38 Tex. 96; Pa. Laws, 1895, p. 264.

[79] Johnson v. Elkins, 1 App. D. C. 430, 441; Society v. Haven, 8 Wheat. 492; Hepburn v. Dunlop, 1 Wheat. 198; Norris v. Hoyt, 18 Cal. 217; Merele v. Mathews, 26 Cal. 455; Osterman v. Baldwin, 6 Wall. 116; Governor v. Robinson, 11 Wheat. 333; Phillips v. Moore, 100 U. S. 208; *Ex parte* Leefe, 4 Edw. Ch. 395; Spear v. Andrew, 48 Tex. 567; Baker v. Westcott, 73 Tex. 129; Zundell v. Gess, 9 S. W. Rep. 879; Goodrich v. Russell, 42 N. Y. 177; Gray v. Kaufman, 82 Tex. 65; Quigley v. Birdseye, 28 Pac. Rep. 741; Wainwright v. Low, 132 N. Y. 313; Wallahan v. Ingersoll, 117 Ill. 123; Wunderle v. Wunderle, 144 Ill. 40, 64; Schultze v. Schultze, *Ib.* 290, 50 Alb. L. J. 269, note 3.

[80] Estate of Gill, 79 Iowa, 296; State v. Smith, 70 Cal. 153; Lyons v. State, 67 Cal. 382; Dawson v. Godfrey, 4 Cranch, 321; Ainslie v. Martin, 9 Mass. 456; *Re* Amat, 18 La. Ann. 405; *Re* Wehlitz, 16 Wis. 443; Const. U. S. Art. 4, § 2; 40 Cent. L. J. 106: Aliens and citizenship.

[81] *Re* Saito, 62 Fed. Rep. 126; Halsey v. Beer, 52 Hun, 366; Luhre v. Eimer, 80 N. Y. 171; Webster, Cit., 138; Rev. St. U. S. §§ 1994, 2010; Kane v. McCarthy, 63 N. C. 299.

[82] Ware v. Wiener, 53 Iowa, 97; Wainwright v. Low, 57 Hun, 386; Kane v. McCarthy, 63 N. C. 299; Kreitz v. Behrensmeyer, 125 Ill. 141; 14 Op. Att. Gen. 403.

[83] Shanks v. Dupont, 3 Pet. 242; Kreitz v. Behrensmeyer, 125 Ill. 141. See, *contra:* 13 Op. Att. Gen. 129; 15 *Ib.* 559.

[84] Comitis v. Parkman, 56 Fed. 556.

[85] Connolly v. Smith, 21 Wend. 617.

[86] 15 Op. Att. Gen. 599.

[87] Priest v. Cummings, 16 Wend. 617; Brown v. Schilling, 9 Md. 7.

[88] Ludlam v. Ludlam, 31 Barb. 486.

[89] *Ex parte* Dupont, 1 Harp. Ch. (S. C.) 5; Albany v. Derby, 30 Vt. 718; Davis v. Hall, 1 Nott & M. (S. C.) 292; Trimbles v. Harrison, 1 B. Mon. (Ky.) 140, 147; Moore v. Tisdale, 5 *Ib.* 352.

[90] Lasportas v. De La Motte, 10 Rich. Eq. (S. C.) 38; State v. Adams, 45 Ia. 99; Lynch v. Clarke, 1 Sandf. Ch. 583; Webster, Cit., 133. *Contra:* Munro v. Merchant, 28 N. Y. 9.

[91] 2 Whart. l. c. § 183, p. 397; Inglis v. Sailors, 3 Pet. 123; Beck v. McGillas, 9 Barb. 25; Ludlam v. Ludlam, 26 N. Y. 356, 31 Barb. 486; Kreitz v. Behrensmeyer, 125 Ill. 198; Webster, Cit., 169, 170; 50 Alb. L. J. 273, § 20.

[92] Gumm v. Hubbard, 97 Mo. 311; People v. Newell, 38 Hun, 78; Kreitz v. Behrensmeyer, 125 Ill. 141; Rev. St. U. S. § 2172.

[93] State v. Adams, 45 Ia. 99; 9 Op. Att. Gen. 62, 356; Webster, Cit., 169; Treaties & Conv. p. 1265. *ff.*

children born abroad while he is a citizen are likewise citizens.[94] Aliens have always been able to take the title to land by purchase and devise, defeasible upon office found, but were not permitted to acquire title by mere operation of law, as by descent, curtesy or dower, without a law enabling them.[95] Under the common law, aliens could acquire title to land by purchase or devise, and the title was divested from the grantor and held by the alien for the benefit of the government;[96] but the statute of 1887 expressly prohibits non-resident aliens from acquiring title unless they fall within the statutory exceptions.[97] Under this statute the vendor was consequently not divested of his title, which therefore could not escheat to the State. This defect was however remedied by an act in force July 1, 1891, enabling all aliens to acquire title to lands "by deed," (which does not enable them to take by devise),[98] and to convey a good title to a citizen of the United States before escheat proceedings are taken in behalf of the State. The same defect seems to exist in the Act of Congress, March 3, 1887, regarding the District of Columbia and the territories. Kansas, which adopted the Illinois act in 1891, Laws, p. 7. has not yet enacted a similar amendment. The title to land must always be vested somewhere, but a defeasible title is as much a title as any other, liable only to be divested at a future time, unless certain conditions prescribed by statute or treaty are complied with or the property is transferred to a person able to hold, either before condition broken, or before escheat proceedings are instituted.[99] A resident alien in possession of land has certainly as much claim to protection as a citizen. His title and his right to possession cannot be disputed by the vendor or any other person, except by the government,[100] and a removal of his alien disability by naturalization or otherwise, before escheat proceedings, renders his title absolute against the government. In such case his right at once develops into a complete and indefeasible title according to his interest in the land, in fee-simple, for life or otherwise;[101] though such may be the effect of a mere declaration of intention to become a citizen of the United States.[102] But it does not retrospectively confirm a title claimed by descent.[103] Lands purchased by an alien before naturalization are held by him under the act enabling him and may be transmitted to his alien heirs even after his naturalization; but lands purchased after he has become a citizen are held by him as a citizen and cannot be so transmitted.[104] The removal of alien disabilities, upon settlement in the State and declaration of intention to become a citizen, is held out as an inducement to aliens to come to the State and become citizens, but their naturalization or declaration of intention does not retrospectively divest a title claimed by descent, if at the time of descent cast the claimant was a non-resident alien and unable to take. The title cannot be in abeyance until an alien, entitled to it but for his alienage, may choose to comply with the conditions of the statute.[105] Of an alien purchaser it was said rather incorrectly, that, "naturalization relates back" and confirms the title acquired during alienage. It would be more correct to say that against a naturalized citizen no inquest of office can be instituted, and that by reason of his citizenship, acquired before escheat proceedings, the defeasible title has become absolute, or as Kent says: "Naturalization waives a forfeiture."[106] The reason for an immediate escheat upon death of an alien land holder dying intestate seems to be, that the law of the land operates only in favor of citizens, and failing to determine who the heirs of such alien shall be, it regards him as having died without legal heirs.[107] But since the law presumes all residents to be citizens of the United States,[108] the State must establish by proof the alienage of the landholder, and upon office found must actually seize the land by its officers, to divest the title from the alien. Escheat proceedings are in their nature criminal, and before a decision in its favor

[94] Davis v. Hall, 1 Nott & M. (S. C.) 292; Charles v. Monson, 17 Pick. 70; Manchester v. Boston, 16 Mass. 230.

[95] Farvel v. Enright, 12 Cal. 450; Norris v. Hoyt, 18 Cal. 217, 67 Cal. 386; Lignare v. Semple, 32 Mich. 438; Sutliff v. Forgey, 1 Cow. 89; Connelly v. Smith, 21 Wend. 59; Bennett v. Harms, 51 Wis. 251; Mick v. Mick, 10 Wend. 380; 1 Washb. R. Pr. (4th Ed.) 74; 1 Ballard R. Pr. § 470.

[96] See on the nature of escheats, Crane v. Reeder, 21 Mich. 24, 1 Washb. l. c. p. 74.

[97] Ryan v. Egan, 156 Ill. 224.

[98] Holland v. Went, 28 Chic. L. N. 17, 201; Ryan v. Egan, 156 Ill. 224.

[99] Manuel v. Wulff, 152 U. S. 506, 510; Sutliff v. Forgey, 1 Cow. 89.

[100] Hepborne v. Dunlop, 1 Wheat. 198.

[101] Harley v. State, 40 Ala. 689; Goodrich v. Russell, 42 N. Y. 177; Osterman v. Baldwin, 6 Wall. 116; Governor v. Robertson, 11 Wheat. 332; Jackson v. Beach, 1 Johns. Ch. 399; Chirac v. Chirac, 2 Wheat. 273, 278; Maynard v. Maynard, 36 Hun. 227; Manuel v. Wulff 152 U. S. 506, 510.

[102] Settegast v. Schrimpf, 35 Tex. 323, 38 *Ib.* 96.

[103] Vaux v. Nesbit, 1 M'Cord Ch. 370; Keenan v. Keenan, 7 Rich. (S. C.) 345; Hall v. Hall, 31 N. Y. 130; Ettenheimer v. Hoffmann, 66 Barb. 374; Goodrich v. Russell, 42 N. Y. 177; Barcley v. Cameron, 25 Tex. 232; Farrell v. Enright, 12 Cal. 450; People v. Rogers, 15 Cal. 159.

[104] Spratt v. Spratt, 1 Pet. 343, 4 *Ib.* 393.

[105] Ryan v. Egan, 156 Ill. 224; Vaux v. Nesbit, 1 McCord Ch. 371; Heney v. Brooklyn, 39 N. Y. 333. An alien widow of a citizen who devised land to her cannot hold it, though after his death she seasonably took the incipient steps required by law to become naturalized. *Aliter* it seems if such steps had been taken before her husband died. Micks v. Micks, 10 Wend. 379.

[106] 2 Kent, 54; Jackson v. Beach, 1 Johns. Ch. 390; Sutliff v. Forgey, 1 Cow. 89.

[107] Goodrich v. Russell, 42 N. Y. 177; Sands v. Lynham, 27 Gratt. 291; Hinckle v. Shadden, 2 Swan. (Tenn.) 46; Crane v. Reeder, 21 Mich. 69; Orser v. Hoag, 3 Hill, 84.

[108] State v. Beackno, 6 Blackf. 488.

and seizure of the land the State has no interest therein, which might be the subject of grant or release to a stranger.[109] No lapse of time is a bar to the State to enforce an escheat,[110] and after forfeiture proceedings and seizure of the land the State may release its rights and make the title absolute in the alien heir by special grant upon petition, or by general act.[111] This may also be done by subsequent treaty,[112] by naturalization or other compliance with the statute before escheat proceedings are commenced.[113] The act of 1887 has so far been before the Supreme Court of Illinois in five instances.[114]

§ 5. *The Statutes of other States of the Union.*—The alien disabilities, remnants of barbaric medieval institutions, have been swept away entirely by the laws of many modern States. They never depended on feudal tenures, but always rested on the broader principle that States are organized for the benefit of their own people, and that those not within the allegiance can have no claim beyond what the law sees fit to give them.[115] The only States without legislation on the subject are Louisiana and Vermont.[116] Not one of the States entirely disables aliens. While resident as well as non-resident aliens stand on the footing of citizens in many of the States as regards ownership of land,[117] other States generally require them to become residents and citizens, or demand a guarantee of reciprocity, or confine them to a certain tract of certain value, quality or location, or to lands acquired by descent, or in the collection of debts, granting only a limited time for the sale of such land, and in failure of compliance with the law provide for an escheat to the State, entitling the alien to the proceeds, subject to a limitation, but more frequently confiscating the land and the proceeds.[118]

[109] Comm. v. Hite, 29 Am. Dec. 226; Crane v. Reeder, 21 Mich. 68; Maynard v. Maynard, 36 Hun, 227; Handrick v. Handrick, 54 Tex. 101; Lindsey v. Miller, 6 Pet. 666. If conditions subsequent to the vesting of an estate are broken that does not *ipso jure* produce a reverter of the title, the estate continues in full force until the proper steps are taken to consummate the forfeiture. Buch v. Rock Island, 97 U. S. 693; People v. Brown, 1 Cain. 426; Davis v. Gray, 16 Wall. 203; Schulenberg v. Harriman, 21 Wall. 44; Schow v. Herriman, 22 U. S. (L. Ed.) 556; Millard v. Henry, 2 N. H. 120; Vail v. Long Island Ry., 106 N. Y. 283; 4 Kent, Comm. 370. Where property is liable to escheat under an alien act, a subsequent act may revoke the power to escheat, and will leave a good title in the alien, where the State has not taken steps before the new act to dispose of the property, the court considering that such was the intention of the new act and that the title vested on the passage of the new act in the heir at law of the deceased owner by descent. Wainwright v. Low, 132 N. Y. 313. So by statute, Pa. Laws, 1895, p. 264.

[110] Crane v. Reeder, 21 Mich. 24, 76; Lindsay v. Miller, 6 Pet. 666.

[111] Jackson v. Clarke, 3 Wheat. 1; Wainwright v. Low, 132 N. Y. 313, 57 Hun, 386; Society v. New Haven, 8 Wheat. 492; Colgan v. McKeon, 4 Zabr. 566; Bollerman v. Blake, 24 Hun, 187, 94 N. Y. 624; Daly v. Beer, 32 N. Y. St. 1064; Fairfax v. Hunter, 7 Cranch, 603.

[112] Fox v. Southack, 12 Mass. 147.

[113] Harley v. State, 40 Ala. 689; Baker v. Westcott, 73 Tex. 129; Goodrich v. Russell, 42 N. Y. 177.

[114] Wunderle v. Wunderle, 144 Ill. 40; Schultze v. Schultze, *Ib.* 290; Schaefer v. Wunderle, 154 Ill. 577; Beavan v. Went, 155 Ill. 592; Ryan v. Egan, 156 Ill. 224, and in a lower court, Holland v. Went, 28 Chic. L. N. 17.

[115] Crane v. Reeder, 21 Mich. 68; Beavan v. Went, 155 Ill. 602; Dawson v. Godfrey, 4 Cranch, 321.

[116] Phillips v. Rogers, 5 Mars. (La.) 70[illegible], 745, 8[illegible] L. R. A. 94. In Vermont it is held that the State has no right to legislate on the subject, because it appertains exclusively to the treaty making power of the federal government. State v. Boston, 25 Vt. 439; *Re* Amat, 18 La. Ann. 403; Phillips v. Rogers, 5 Mart. 745. Wunderle v. Wunderle, 144 Ill. 40, holds such legislation constitutional.

[117] 35 Cent. L. J. 166; 9 Harv. L. Rev. 91. See also note in 31 L. R. A. 86, 146; Ala. Code, 1886, § 1914; Ark. Dig. St. 1894, p. 266; Mansf. Dig. § 233; Fla. R. St. 1892, § 1816; Ga. Code, 1882, § 1661; Ga. Laws, 1893, p. 33, La. *supra*, note 116; Maine R. St. 1883, p. 604, § 2, p. 812, § 5; Md. R. Code, 1888, p. 9; Mass. R. St. 1882, p. 744; Laws, 1895, ch. 387; Mich. How. St. 1882, § 5775; N. C. Code, 1883, I, p. 3, Nev. G. St. 1885, § 2655, Laws, 1879, ch. 43; N. J. R. St. 1877, I, p. 6; O. R. St. 1890, § 4173; Ore. R. St. 1892, § 2988; R. I. Publ. St. 1896, p. 652; S. C. G. St. 1882, §§ 1768, 1847; Laws, 1893, p. 409; S. D. Laws, 1890, ch. 123; Tenn. Code, 1884, § 2804; Laws, 1893, pp. 212, 264; Laws, 1895, pp. 123, 201; Va. Code, 1887, § 43; Laws, 1890, p. 33; Vt. *supra*, note 116; W. Va. Code, 1891, p. 632, pp. 20, 666; 2 Whart. Dig. Int. Law, p. 495.

[118] Ariz. Alaska. See Territories. Cal. Deer. St. II, §§ 671, 1404; Col. Mill. Ann. St. 1891, pp. 206, 421; Conn. G. St. 1888, ch. 5, §§ 15, 16; Del. R. St. 1893, ch. 81, p. 617; Laws, 1893, vol. 19, p. 1114; D. C See Territories; Idaho, Rev. St. 1887, § 5715-7, § 2827; Ill. Starr. & C.. 1896, aliens. Ind. R. St. 1896, §§ 2507, 2918, 2967, Act March 9, 1885; Iowa, McCl. St. 1888, p. 763; Laws, 1888, p. 125, 1894, p. 86; Burrow v. Burrow, 67 N. W. Rep. 208; Easton v. Huott, 64 N. W. Rep. 408; Kan. Laws, 1891, ch. 3; Ky. G. St. 1894, p. 265; Minn. St. 1894, §§ 5874-8, which expressly respects treaty rights; Miss. Ann. Code, 1892, § 2439; Mo. Laws, 1895, p. 207, which excludes aliens but allows them to acquire lands "by inheritance," etc. Bouv. L. Dict., defines inheritance as the right to succeed to the estate of an intestate. To say an alien can acquire "by fee simple" is a perversion of ideas. He may acquire "a fee simple" by descent or inheritance, or by purchase, but cannot acquire "by fee simple." See, Query, 41 Cent. L. J. 39, also, Mont. Civ. Code, 1895, § 1867, "take by succession;" Neb. Comp. St., 1895, pp. 21, 853; N. H. G. L. 1891, ch. 137, §§ 16, 17, pp. 378, 499; N. M. See Territories; N. Y. R. St. 720, 721, Vol. I, 57, 69, 75, Vol. II, Laws, 1889, ch. 42, 1893, ch. 207, 1894, ch. 136; N. D. See Act of Con., March 3, 1887, not repealed; Okl. See Territories; Pa. Purd. Dig. 1894, I, p. 91, Laws 1895, pp. 238, 264; Tex. Civ. St. 1888, I, p. 21; Laws, 1891, p. 82, declared unconstitutional; 82 Tex. 496; 3 Natl. Corp. Rep. p. 323; Utah, Comp. L. 1888, p. 80; Act of Con. March 3, 1887; Wash. Hill. Ann. St. 1891, I, § 2955, superseded by Act of Con., March 3, 1887, and in 1889 by Art. II, § 33 of the State constitution; Laws, 1895, p. 268, 1889, p. 288; Wis. Ann. St. 1889, I, p. 80, §§ 2160, 2200, 2201; Wyo. R. St. 1887, § 2226, enacted in 1876, before Act of Con. of March 3, 1887, which governed the territory; since it became a State the above section is the only provision.

§ 6. *Conclusion.*—Recently,[119] the common law rule prohibiting citizens from acquiring title to land if they trace their descent through alien ancestors, was revived in Illinois. The court instead of ruling that complainant was excluded by nearer relatives,[120] "prefer to place their decision upon the ground that he must trace his kinship through several non-resident aliens, who if themselves living, could not have succeeded to the estate." Complainant, the deceased and the widow were citizens of the United States all other parties, their and complainant's ancestors, non-residents and citizens of Great Britain. It is argued that by repeal of the act of 1851 the common law rule was revived, if it ever had been in force in Illinois. The statutory rule that no act repealed shall be revived by repeal of the repealing act is held not applicable to the common law, so that the repeal of an act, abolishing the common law rule in any particular, revives the common law. This may be so when the repealing act leaves a complete gap, or is so defective that the supplementing power of the common law is needed. The act of 1887 expressly enables alien heirs of aliens to inherit, and also alien heirs of citizens, if they will comply with its conditions and declare their intention to become citizens. The policy of the common law is incompatible with such an act and has never been in force in Illinois in view of its past legislation which repudiated the above common law rules on the same day it adopted the common law, and in 1872, under the alien act of 1851, completely removing all alien disabilities, adopted the civil law of descent, to which distinctions between descents direct or indirect and mediate or immediate or unknown.[121] The act of 1887 provides that "any alien resident of the United States who has declared his intention of becoming a citizen thereof shall thereupon be able to take and hold lands and dispose of the same during 6 years thereafter as if he were a citizen of the United States." Under the above decision this provision is a fraud upon an alien declaring his intention as provided. The act provides an escheat if he has not become naturalized within 6 year after declaring his intention, and if then living, has not sold the land in good faith to a purchaser for value. The above case tells him that he is barred if he has become a citizen within that time but before descent cast and traces his descent through alien ancestors; while the statute provides for an escheat if he fails to become a citizen within 6 years after declaring his intention. Must he form a habit of declaring his intention every year, until descent cast, as he may do by discontinuing his residence in the United States; or shall he see to it that descent is cast in time? Laws and pleas are to be construed more favorably to alien friends than formerly when a low state of commercial intercourse and of civilization regarded almost all foreigners as barbarians.[122] The law is very gentle in the construction of alien disabilities and will rather contract than extend their severity.[123] The exclusion of a citizen from taking lands by inheritance merely because the degree of his consanguinity to the last owner is to be ascertained by tracing his pedigree through deceased aliens, is and always was an absurdity founded only on a feudal fiction and not on any sound principle of public policy. Its primary object probably was to enrich the crown by escheats. It is no less absurd than to debar a citizen because his lineal ancestors were aliens. In England the common law rule was abolished 150 years ago by statute 11, 12, Wm. II., ch. 6, and it applied expressly to all ancestors lineal and collateral.[124] The principle of "placing the foreigner in regard to all objects of navigation and commerce upon a footing of equal favor with the native citizen" is altogether congenial to the spirit of our institutions and the main obstacle to its adoption consists in this that the fairness of its operation depends upon its being admitted universally. The United States have nevertheless made considerable advances in their proposals to other nations towards the general establishment of this most liberal of all principles of commercial intercourse.[125] To hold an alien able to purchase and to hold land, but to be disqualified from taking by descent, involves a legal solicism.[126] In antiquity an alien was an enemy, in the middle ages an outlaw, the personal property of the prince in whose territory he traveled, liable for a heavy duty for the privilege of trading with the natives and with-

Territories and D. C., 24 U. S. St. at L. ch. 340, March 3, 1887, Op. Att. Gen. 19 Chic. L. N. 370. Ariz. R. St. 1887, § 1447, and the former Mont. St., 1887, § 553, were void as in conflict with this act of congress both being enacted a few days prior, also Wash. 1891, I, § 2955; also Wyo. 1887, § 2226.

[119] Beavan v. Went, 155 Ill. 592, 31 L. R. A. 85, n.

[120] This seems to be the opinion of the court, pp. 598, 599, and what is said there reveals an erroneous construction of the laws of descent of this State which allow collateral kindred to share in land with the widow, who takes her half as statutory portion and is not an heir. If a citizen dies and his next of kin is an alien who cannot take, he cannot interrupt the descent to others and the inheritance descends to the next of kin competent to take, as if no such alien had ever existed. Orr v. Hodgson, 4 Wheat. 453; Duroure v. Jones, 4 T. R. 300, 2 Kent, 56, and it seems that if a statute of descent specifies who the heirs are, disability in some heirs of the same class does not transfer their shares on remoter heirs, but enlarges those of the same class, able to take.

[121] Bates v. Brown, 5 Wall. 710; *Re* Campbell, 29 Atl. Rep. 494; Phillips v. Rogers, 5 Mart. (La.) 745, Duke v. Milne, 17 La. 312; 5 Chic. L. J. (N. S.) 413. Settegast v. Schrimpf, 35 Tex. 323; Andrews v. Spear, 48 *Ib.* 567; Hanrick v. Hanrick, 54 Tex. 101, 61 *Ib.* 596; Wunderle v. Wunderle, 144 Ill. 40, holds the Act of 1887 declaratory of the common law, followed by Beavan v. Went, 155 *Ib.* 592. But, see, 5 Chic. L. J. (N. S.) 413, 29 Atl. Rep. 494.

[122] Taylor v. Carpenter, 2 W. & M. 1.

[123] 2 Kent, 56, 1 Ventr. 427.

[124] McCarthy v. March, 5 N. Y. 274; Bingh. Descent, 496.

[125] 2 Whart. Dig. Int. L., § 201.

[126] People v. Folsom, 5 Cal. 380. See Diss. op. in 3 Iowa, 411, 414.

out any personal rights, so that upon his death his property escheated to the prince. This period created the doctrine that the laws of a State operate only in favor of citizens, a doctrine which should be wiped out from the laws of modern States and swept away with other remnants of barbaric times. The rule should be reversed and should protect aliens acquiring land by operation of law and in collecting their debts, as is lately done in Indiana and Missouri.[127] The whole legislation on this subject is rather on an experimenting basis and it may well be hoped that the many grave defects in these statutes and the injustice caused by them[128] will soon lead to their abolishment.[129]

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[127] *Supra*, also Act of Congress, March 3, 1887, and Ind. Stat. 1896, § 2967*a*.

[128] Schaefer v. Wunderle, 154 Ill. 577; Beavan v. Went, 155 Ill. 592.

[129] 3 Natl. Corp. Rep. 323.

CONTRACT — MALICIOUS INTERFERENCE — PROCURING DISCHARGE OF SERVANT.

RAYCROFT V. TAYNTOR.

Supreme Court of Vermont, March 14, 1896.

A superintendent of a quarry, who refuses to permit another to take stone therefrom unless the latter discharges a certain employee, is not liable for causing such discharge, even though he act maliciously, where the contract under which the employer took stone from the quarry was for no definite period, and was terminable at the pleasure of the superintendent.

ROSS, C. J.: At the close of the testimony the defendant requested the court to direct the jury to return a verdict in his favor, and excepted to its failure to comply with this request. He also excepted to that portion of the charge of the court set out in the exceptions. These exceptions raise the same question. He contends that the defendant's relation to the business and property of C. E. Tayntor was such that no liability arose from his acts of which the plaintiff complains. C. E. Tayntor owned and operated a granite quarry, in the fall of 1891, and therein employed from 60 to 90 workmen. He resided in New York, and spent very little time at the quarry. The defendant was the manager and superintendent of his business, employed and discharged the help, paid them, and purchased supplies and anything needed in the business. A man by the name of Libersant obtained from the defendant leave to go upon the quarry and cut some of the poor granite into paving stone on paying an agreed price therefor. This contract was for no definite period, and was terminable at the pleasure of the defendant. Libersant had the right to leave the work at pleasure. He expected, if no difficulty arose, to continue the work through the winter. The plaintiff came to work for Libersant by the hour, with an understanding, if they got along well together, that he could work through the winter. Either party could end this arrangement at his pleasure. While the arrangement was existing between the plaintiff and Libersant, the plaintiff purchased the standing trees on a piece of land adjoining the quarry, on which was a small spring. C. E. Tayntor, to obtain the spring for the use of the quarry, through the defendant purchased the land on which it was located, and on which the trees which the plaintiff had purchased stood. The plaintiff had cut some of the trees. The defendant, acting for C. E. Tayntor, purchased from the plaintiff what trees there were then standing on this piece of land about the spring. When the defendant was paying the plaintiff for the trees, a difficulty arose over the terms of a receipt which the defendant asked the plaintiff to sign. As the plaintiff's testimony tended to show, the defendant became very angry, ordered the plaintiff to leave the premises, and added that he would go to Libersant and get him discharged; that he did go to Libersant and tell him that, if he did not discharge the plaintiff, he could no longer cut paving blocks on the premises. Libersant informed the defendant of his arrangement with the plaintiff, that the plaintiff was satisfactory to him and that he did not want to discharge him. The defendant insisted that he must discharge the plaintiff or leave the works. Libersant thereupon, and because the defendant demanded he should do so or leave, discharged the plaintiff. The evidence tended to show that the plaintiff was not able that winter to procure another place where he could obtain as good wages as Libersant was paying him. The court, in substance, charged that notwithstanding the defendant, as superintendent and manager for C. E. Tayntor, had the right to terminate the contract with Libersant at pleasure, and without having any reason for so doing, and Libersant had the right to dismiss the plaintiff at his pleasure, yet if his dismissal was brought about by the defendant's threat to terminate Libersant's right to remain on the quarry and cut paving stone, and this action of the defendant was malicious, and occasioned damage to the plaintiff, the action could be maintained. The court did not define to the jury what constitutes legal or actionable malice. It is evident that if the defendant, in the capacity which he sustained to the quarry, actuated by hatred and ill will, or for any other cause, had terminated the contract with Libersant, and compelled him to leave the quarry, Libersant could have maintained no action therefor, although it was shown to be to his pecuniary detriment. By so doing the defendant would be exercising a legal right, resting in him as superintendent and manager of the business. When one exercises a legal right only, the motive which actuates him is immaterial. If the defendant had exercised this right, and Libersant had left the quarry, the plaintiff would have had to leave working on the quarry also. He had acquired his right to work on the quarry under the

right which the defendant, as superintendent and manager, had conferred on Libersant. Hence the plaintiff's right to remain and work there for Libersant, being derived from the right which the defendant, in his capacity of superintendent and manager, had conferred upon Libersant, was not superior to the right of Libersant. If the defendant had done what he threatened to do, discharged Libersant for the express purpose of removing the plaintiff from the quarry, and if he would have incurred no liability, whatever may have been his motive for the act, it is difficult to discover how his threat to do this act if Libersant did not discharge the plaintiff can give a right of action to the plaintiff, who had no right to remain at work on the quarry except what had been conferred by Libersant. The stream cannot rise higher than its source. The charge excepted to treats the defendant as an intermeddler, and without right to determine who should remain and work on the quarry. On the undisputed facts in regard to determining who might remain and work upon the quarry, he was clothed with all the right and power of the owner.

The authorities cited for the plaintiff clearly establish that if the defendant, without having any lawful right, or by an act, or threat, *aliunde* the exercise of a lawful right, had broken up the contract relation existing between the plaintiff and Libersant, maliciously or unlawfully, although such relation could be terminated at the pleasure of either, and damage had thereby been occasioned, the party damaged could have maintained an action against the defendant therefor. But the same authorities clearly establish that if the defendant's act or threatened act was one which, in his relation to the property and parties, he had a lawful right to perform, unless it involved a superior right of the plaintiff, this gave the plaintiff no right of action, though it occasioned a loss to him, and was actuated by a desire to injure. As said in Walker v. Cronin, 107 Mass. 554: "Accordingly it is generally held that no action will lie against one for acts done upon his own land in the exercise of his rights of ownership, whatever the motive, if they merely deprive another of advantages, or cause a loss to him without violating any legal right; that is, the motive is immaterial." Frazier v. Brown, 12 Ohio St. 294; Chatfield v. Wilson, 28 Vt. 49; Mahan v. Brown, 13 Wend. 261; Trustees v. Youmans, 50 Barb. 316. A similar decision is found in Wheatley v. Baugh, 25 Pa. St. 528, but the suggestion in Greenleaf v. Francis, 18 Pick. 118, was approved so far as this, namely, that malicious acts without the justification of any right—that is, acts of a stranger resulting in the loss or damage—might be actionable. "If disturbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuria* unless some superior right by contract or otherwise interfered with." So, too, in Chipley v. Atkinson, 23 Fla. 206, 1 South. Rep. 934, it is said: "Where one does an act which is legal in itself, and violates no right of another person, it is true that the fact that the act is done from malice or other bad motive toward another does not give the latter a right of action against the former. Though there be a loss or damage resulting to the other from the act, and the doer was prompted to it solely by malice, yet if the act be legal, and violates no legal right of the other person, there is no right of action." In support of this doctrtne a large number of decisions are cited, and among them Chatfield v. Wilson, 28 Vt. 49; South Royalton Bank v. Suffolk Bank, 27 Vt. 505; Harwood v. Benton, 32 Vt. 724. William L. Hodge, in the January and February numbers of the *American Law Review* for 1894, in an article on "Wrongful Interference by Third Parties with the rights of Employers and Employed," reviews a great number, and on page 54 says: "So, also, it is said that there are, indeed, many authorities which appear to hold that, to constitute an actionable wrong, there must be a violation of some definite legal right of the plaintiff. But these are cases, for the most part, at least, where the defendants were themselves acting in the lawful exercise of some distinct right, which furnished the defense of a justifiable cause for their acts, except so far as they are in violation of a superior right in another. Therefore, if the defendant's act be (1) legal in itself and (2) violates no superior right in another, it is not actionable, although it be done maliciously, and cause damage to that other."

On the doctrine of these authorities, cited by the plaintiff, the threatened act of the defendant was one which, in his relation to the business of the quarry and Libersant, he had the legal right to do, and it would violate no superior right of the plaintiff. The court should have ordered the verdict as requested at the close of the evidence. Judgment reversed, and cause remanded.

NOTE.—In addition to the citations in the opinion of the court, the reader will find an interesting and exhaustive article on "What interference in the performance of contracts by persons not parties thereto is actionable," in 40 Cent. L. J. 86. In that article will be found most of the authorities on this vexatious question. In a case in 1893, and one of the latest cases on the subject, the Supreme Court of California held that suit for damages cannot be maintained against one who maliciously but without threats, violence, fraud, falsehood or benefit to himself, procures a breach of contract between others. Boyson v. Thorn, 33 Pac. Rep. 492. The English cases of Lumley v. Gye, 2 El. & Bl. 216, and Bowen v. Hall, 6 Q. B. Div. 333, wherein the contrary doctrine was originally laid down were repudiated by the California court, and the reasoning of Lord Coleridge, who dissented in those cases, was approved. The cases of Walker v. Cronin, 107 Mass. 555; Jones v. Stanley, 76 N. C. 355, and Haskins v. Royster, 70 N. C. 601, which followed the English ruling, were repudiated or satisfactorily distinguished by the court, and the Kentucky cases—Boulley v. Macauley, 15 S. W. Rep. 60, and Chambers v. Baldwin, 15 S. W. Rep. 57, where such right of action was denied, were cited approvingly. The case of Chesley v. King, 74 Me. 164, in which the English doctrine was asserted, was not noticed or at least not

referred to. The argument of the court was substantially that of Sir John Coleridge and Lord Coleridge, who ingeniously combatted the views of Lord Campbell, Lord Justice Brett, Lord Selborne and Mr. Justices Crompton and Earl, in the cases of Lumley v. Gye and Bowen v. Hall. The reader will find an extended review of all these cases in 32 Cent. L. J. 275, in the shape of a note to the Kentucky case of Chambers v. Baldwin. On the other hand the English doctrine has more recently been affirmed by the English Court of Appeal in Temperton v. Russell, wherein it was held that it was actionable for the defendants, a joint committee of several trade unions, maliciously to induce persons to break contracts with the plaintiff, an employer who had refused to accede to the demands of the unions. It was also held actionable for such persons maliciously to combine to induce persons not to enter into new contracts with such plaintiffs. The first point decided is plainly sustained by the doctrine of Lumley v. Gye and Bowen v. Hall. The second point presents more difficulty, though it seems to be a necessary sequence of those cases. At the same time the view of the court that if one person had induced others not to contract with plaintiff there might have been no right of action and that the merit of the action was in the "combination" of persons seems illogical and unreasonable. The effort of the California court and other courts, taking a similar position, to distinguish between cases of master and servant and those of ordinary contract is not generally satisfactory as was remarked editorially in this JOURNAL at the time of the decision of the Kentucky case (32 Cent. J. 265). The English doctrine commends itself as the sounder, upon the ground, divested of all subtlety, that every wrongful act which produces actual injury to another, such injury being its natural and probable consequence is actionable.

BOOK REVIEWS.

MAUPIN ON MARKETABLE TITLE TO REAL ESTATE.

This work as the author says in his preface, is a treatise "on the law of title to real property as that law is applied between vendor and purchaser. The material which composes it has been drawn principally from cases that have arisen between the buyer and seller of lands and not from decisions in ejectment or other possessory actions, though of course these latter cases have been availed of whenever they supply principles which affect the rights of the vendor or purchaser with respect to the title that is to be conveyed." The multiplicity of questions that are constantly arising on the subject of what constitutes a good and sufficient title to real estate as between the seller and buyer thereof will render this book of especial value. The author treats in general of remedies in affirmance of the contract of sale and of remedies in disaffirmance or rescission of the contract of sale. Under these two general heads are discussed in successive chapters, actions for breach of contract, express and implied agreements as to title, of the sufficiency of the conveyance tendered by the vendor, *caveat emptor*, covenants which the purchaser has a right to demand, abstract of title, waiver of objections to title, tender of performance and demand for deed, measure of damages for inability to convey a good title, action against the vendor for deceit, action for breach of covenants, detention of purchase money where has been a breach of the covenants, specific performance, estoppel of the grantor, reformation of the conveyance, rescission by act of the parties, of virtual rescission by proceedings at law, of resitution of the purchase money, of rescission by proceedings in equity, of the right of vendor to perfect the title, of remedy by injunction against the collection of the purchase money, of fraud and mistake. The book is exceedingly well written and has an abundance of notes and exhaustive citation of authorities. The author has been a frequent contributor to this JOURNAL and is admirably qualified for work of this character. The volume has eight hundred and fifty pages and is beautifully printed and bound. Published by Baker-Voohris & Co., New York.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ABATEMENT AND REVIVAL—Death of Party before Appeal.—Code, § 3305, provides that where a party dies after verdict and before judgment, the judgment may be entered as if he has not died. Section 3307 provides that if, pending an appeal, writ of error, etc., the death of a party, which, if it had occurred after verdict in an action, would not have prevented judgment being entered, be suggested or relied on in abatement in the appellate court, said court may enter judgment as if such death had not occurred: Held, that such statutes do not authorize the supreme court of appeals to enter judgment in a case in which the alleged plaine-

tiff in error died before the appellate proceedings were begun.—BOOTH v. DOTSON, Va., 24 S. E. Rep. 985.

2. ACCOUNT STATED BY CORPORATION.—Where an account has been stated between a corporation and an individual, and a mortgage given by the corporation to secure the balance due, the mortgagor subsequently reaffirming the correctness of the account and consenting to a decree of foreclosure, a stockholder cannot maintain a bill in his own name to enjoin the execution of the decree, and to reopen the account, because of supposed false or overcharges, in the absence of any fraud or collusion between mortgagor and mortgagee for the purpose of prejudicing such stockholder. —VAN KIRK v. ADLER, Ala., 20 South. Rep. 836.

3. ADMINISTRATION—Appointment of Administrator. —One who contests an application for the appointment of an administrator cannot complain that the publication of the hearing was insufficient.—IN RE BROOKS' ESTATE, Mich., 67 N. W. Rep. 975.

4. ADVERSE POSSESSION.—Where uncleared lands have been granted by the State by conflicting patents, testimony of the junior patentee that he had possession of the lands in controversy, without any showing of visible acts of ownership, is insufficient to show adverse possession.—HARMAN v. RATLIFF, Va., 24 S. E. Rep. 1023.

5. APPEAL—Modification of Judgment.—The supreme court has no power to reverse, change, or modify its decree of a previous term in the same case, or to pass a decree inconsistent with its adjudication of such term, though the Supreme Court of the United States has decided in another case that such decree is erroneous.—BANK OF COMMERCE v. STATE, Tenn., 36 S. W. Rep. 719.

6. APPEARANCE BY ATTORNEY.—The unauthorized appearance of an attorney for an absent defendant upon whom only constructive service has been made does not affect or conclude such party.—MORTGAGE TRUST CO. OF PENNSYLVANIA v. COWLES, Kan., 45 Pac. Rep. 605.

7. ASSIGNMENT FOR BENEFIT OF CREDITORS.—In an action brought by a preferred creditor to recover the value of certain goods taken by attachment from the possession of the trustee of an insolvent, a petition which fails to show the value of the goods conveyed to the trustee, and that the goods remaining in his hands were insufficient to pay plaintiff's claim in full, does not state a cause of action.—MACK v. MITTENTHAL, Tex., 36 S. W. Rep. 799.

8. ASSIGNMENT FOR BENEFIT OF CREDITORS—Fraud. —An assignment for the benefit of creditors, valid on its face, will not be set aside, at the instance of a dissenting creditor, because of fraud of the assignor, where the assignment was in fact beneficial to the creditors, and there was no notice to the assignee or to the creditors of the alleged fraud.—HALSEY v. CONNELL, Ala., 20 South. Rep. 445.

9. ASSIGNMENT OF ACCOUNT—Acceptance by Debtor. —An order attached to an account, directing its payment to the party named in the order, and delivered to him, operates as an assignment of the debt or account, although the order is not accepted by the debtor, and is valid as against a subsequent garnishment.—UNION IRON WORKS v. KILGORE, Minn., 67 N. W. Rep. 1017.

10. ATTACHMENT — Plea in Recoupment.—In attachment on a debt alleged to be due under contract, where the defendant pleads in recoupment, a judgment for defendant is equivalent to a judgment that plaintiff had no cause of action, and hence plaintiff, not being a creditor under such judgment, cannot, in an action for wrongful attachment, brought by the vendee of defendant, plead in justification that the sale to the vendee was in fraud of creditors.—GRISHAM v. BODMAN, Ala., 20 South. Rep. 514.

11. ATTORNEYS—Service of Subpœna while Attending Court.—Service of subpœna to attend hearings as a witness, upon an attorney who has come from another State to attend to business of his clients pending in the court, before he has had reasonable time to take his departure, will be set aside, on his motion, as a violation of the protection which the law extends to all necessarily attending upon a court, especially when the business of his clients requires his immediate presence in other States.—CENTRAL TRUST CO. OF NEW YORK v. MILWAUKEE ST. RY. CO., U. S. C. C. (Wis.), 74 Fed. Rep. 442.

12. ATTORNEY AND CLIENT—Disbarment Proceedings. —An order to show cause why an attorney should not be disbarred may issue, in the discretion of the court, on charges filed by the prosecuting attorney, and verified by him on information and belief.—IN RE SHEPARD, Mich., 67 N. W. Rep. 971.

13. BAIL — Pending Appeal.—Admission to bail after conviction, pending appeal, is matter of discretion, primarily vested in the trial judge, whose action therein will not be disturbed except in the instance of manifest abuse.—EX PARTE TURNER, Cal., 45 Pac. Rep. 571.

14. BAILMENT—Liability of Bailee for Hire.—In an action against a bailee for hire, for damages to a barge, where the evidence as to the condition of the barge at the time of hiring was conflicting, it was error to charge that, for the plaintiff to recover, it must appear that defendant had failed to use ordinary care; such instruction placing the burden on plaintiff to show negligence on the part of defendant, irrespective of the condition of the barge.—HIGMAN v. CAMODY, Ala., 20 South. Rep. 480.

15. CARRIERS — Private and Common.—The responsibility and duties of a private carrier, operating a railroad for the purposes of his own business, and permitting persons to travel gratuitously on such road, are different from those of common carriers for hire; and, in an action against such a private carrier for damages caused by its alleged negligence, it is not error to refuse instructions to the jury based upon the rules as to the liability of common carriers.—WADE v. LUTCHER & MOORE CYPRESS LUMBER & CO., U. S. C. C. of App., 74 Fed. Rep. 517.

16. CARRIERS OF GOODS — Mistake of Delivery.—A common carrier, after delivery of the goods to the consignee, without demanding payment of the price due the consignor, in whom the title to the goods was to remain until payment, cannot recover possession of the goods, which he was induced to deliver to the consignee by the fraud of the latter, without paying to the consignee the amount of the freight paid by him on the delivery of the goods to him.—WALKER v. LOUISVILLE & N. R. CO., Ala., 20 South. Rep. 358.

17. CARRIERS OF PASSENGERS — Degree of Care Required.—A carrier is bound to exercise extraordinary care for the safety of passengers.—DAVIS v. CHICAGO, M. & ST. P. RY. CO., Wis., 67 N. W. Rep. 1132.

18. CARRIERS OF PASSENGERS—Ejectment from Car.— Plaintiff purchased a railroad ticket limited to the date indorsed thereon; and though he did not read the indorsement, he knew that the company was selling such tickets, and his attention had been called to similar indorsements. On the conductor's refusal to accept said ticket, because it was out of date, plaintiff declined to pay fare, permitted himself to be led to the platform and gently ejected, after which he re-entered the car, and paid the fare to his destination: Held, that plaintiff had no cause of action against the company.—MCGHEE v. DRISDALE, Ala., 20 South. Rep. 392.

19. CARRIERS OF PASSENGERS — Sleeping-Car Companies.—The owners of sleeping cars, though not common carriers, are responsible for the discharge of certain general duties, arising from their contracts with their passengers, and involving the exercise of ordinary and reasonable care and attention toward them, and a violation of such duties may be made the subject of an action either *ex contractu* or *ex delicto*.— HUGHES v. PULLMAN'S PALACE-CAR CO., U. S. C. C. (Mo.), 74 Fed. Rep. 499.

20. CERTIORARI TO COUNTY COMMISSIONERS.—The writ of *certiorari* will only run to a board of county

commissioners as to matters in which they exercise judicial functions.—STATE v. BOARD OF COM'RS OF WASHOE COUNTY, Nev., 45 Pac. Rep. 529.

21. CHATTEL MORTGAGES — Foreclosure.—Where a mortgage is given to secure payment of several notes, on default in the payment of the first, the mortgagor, acting in good faith, as against his other creditors not having liens on the property, may authorize the mortgagee to sell all the property, and apply the proceeds in payment of the other notes which were soon to mature.—HOGAN v. HUDSON, Mich., 67 N. W. Rep. 1081.

22. CONSTITUTIONAL LAW — Police Power.—Act Feb. 29, 1896, which prohibits the selling of pools on trials of speed of animals to take place without the State, since it is intended to suppress a form of gambling, is a valid exercise of the police power of the State, and does not, therefore, violate Const. U. S. art. 1, cl. 3, § 8, vesting in congress the power to regulate commerce with foreign nations and among the several States, and with Indian tribes.—LACEY v. PALMER, Va., 24 S. E. Rep. 930.

23. CONSTITUTIONAL LAW — Sale of Oleomargarine.—Acts 1894-95, p. 777, prohibiting the sale of oleomargarine and other products made in imitation of yellow butter, is within the police power of the State.—COOK v. STATE, Ala., 20 South. Rep. 860.

24. CONSTITUTIONAL LAW—Special Laws.—Acts 1895, ch. 182, making it a misdemeanor, punishable by fine, in counties having a certain population according to the census of 1890, for the owners of live stock to allow the same to run at large, in view of the fact that it does not apply equally to all counties now or hereafter having the same population, is not the "law of the land," within the provision of Const. art. 1, § 8, declaring that no man shall be deprived of his property but by the law of the land.—SUTTON v. STATE, Tenn., 36 S. W. Rep. 697.

25. CONSTITUTIONAL LAW—Special Legislation—Corporation.—Const. art. 14, § 1, forbidding the formation of corporations by special laws, except certain corporations, does not prevent the legislature from ratifying by special act irregularities in the formation under a general law of a corporation included in the exception.—STATE v. WEBB, Ala., 20 South. Rep. 462.

26. CONSTITUTIONAL LAW — Stock Running Uncontrolled.—Acts 1886-87, p. 913, §§ 1, 3, 6, entitled "An act to prevent, horses, cows, hogs, from running uncontrolled on the crops in the county of Montgomery," and which afford a complete remedy to the person whose crop has been injured by the trespass of stock of another uncontrolled, are constitutional; and, since they are an entire law in themselves, they could stand, though all other provisions of the act were stricken out.—SHEHANE v. BAILEY, Ala., 20 South. Rep. 359.

27. CONSTITUTIONAL LAW—Taxation.—The charter of an insurance company, providing that the company shall pay a State tax of a certain amount on each share of capital stock, which shall be in lieu of all other taxes, does not exempt from further taxation the capital stock.—STATE v. HERNANDO INS. CO., Tenn., 36 S. W. Rep. 721.

28. CONTEMPT—Criticism of Decree.—2 How. Ann. St. § 7234, subd. 6, giving courts power to punish as a contempt the publication of a false or grossly inaccurate report of the court proceedings, does not limit the power to causes still pending in the court, but extends to the criticism of past decrees.—IN RE CHADWICK, Mich., 67 N. W. Rep. 1071.

29. CONTRACT — Assumpsit — Pleading.—Although a contract may be invalid because not executed in the form required by the statute, the only effect of such invalidity would be to bar actions to enforce the contract or to recover damages for a breach of the same. In such a case a recovery could be had for services rendered in performance of the contract, upon the implied promise of the defendant to pay for such services as were received by him and beneficial to him. In such cases, upon a proper common count, evidence of the special contract can be received for other purposes than that of its direct enforcement.—BUCKI v. MCKINNON, Fla., 20 South. Rep. 540.

30. CONTRACT—Breach—Damages.—Where the completion of a contract under which plaintiff was to do the work and furnish the materials for a bridge is prevented by the other party, the former may sue on the contract for the contractprice of the work already performed and materials furnished, and in the same action recover the profits he might have realized had he not been prevented from completing the contract.—TENNESSEE & C. R. CO. v. DANFORTH, Ala., 20 South. Rep. 502.

31. CONTRACTS—Construction.—A provision in a contract that the report of an engineer, inspector, or arbiter as to the amount and quality of the work done or material furnished under a contract shall be conclusive upon the parties to the agreement is a legal stipulation, and can only be set aside for fraud or for such gross mistakes as imply bad faith or a failure to exercise an honest judgment.—ELLIOTT v. MISSOURI, K. & T. RY. CO., U. S. C. C. of App., 74 Fed. Rep. 707.

32. CONTRACT—Measure of Damage.—In an action for breach of a contract to erect a mill on defendant's land, and manufacture timber thereon into lumber and shingles, for a fixed price, where it appears that defendant partially performed the same, and that the prospective profits were ascertainable by deducting the reasonable cost of manufacture from the fixed price, plaintiff was entitled to have evidence as to such profits submitted to the jury on the question of damages.—BARRETT v. GRAND RAPIDS VENEER WORKS, Mich., 67 N. W. Rep. 976.

33. CONTRACT — Pleading — Conditions Precedent.—Where concurrent acts are to be done, the party who sues the other for non-performance must aver that he had performed or was ready to perform his part of the contract.—CASEY v. LESLIE, N. J., 35 Atl. Rep. 6.

34. CONTRACTS—Uncertainty as to Time.—A railroad company contracted to put in a switch and side track at a sandpit owned by plaintiff, and to haul sand from such pit for $8 per car load. The switch and side track were put in as agreed, and sand was hauled under the agreement for three years, when the company notified plaintiff that from a certain date the rate of freight would be increased to $12 per car: Held the contract, being uncertain as to time, was determinable at the election of either party, and an action would not lie for damages for the breach. — BALDWIN v. KANSAS CITY, M. & B. R. CO., Ala., 20 South. Rep. 349.

35. CONTRACT BETWEEN LEGATEES—Equitable Lien.—An agreement whereby C, a legatee, purchases the interest of K, another legatee, and agrees that the executor shall pay the same to K before paying to C any sum due him under the will, creates an equitable lien on the personal property or its proceeds, to which C may be entitled under the will, but not on the real estate.—CARROLL v. KELLY, Ala., 20 South. Rep. 456.

36. CONTRACT OF SALE—Guaranty of Horse Power.—Libelant contracted to refit a yacht with electric storage batteries, and rewind the original motor therein "so as to produce 15 horse power, or 25 horse power as a spurt, or to produce readily about 10 horse power as ordinary service:" Held that, in the absence of any definite explanation, this amount of horse power was to be developed in the battery and wires for delivery to the machinery, subject to such frictional diminution in the machinery itself as might intervene between the ends of the wires and the propeller blades. —THE ELECTRON, U. S. C. C. of App., 74 Fed. Rep. 968.

37. CORPORATIONS — Agreement by Stockholders.—Where the stockholders of a corporation mutually agreed to contribute in proportion to their respective holdings of stock for the purpose of defraying the corporate debts, as such agreement rested upon sufficient consideration, and was made for its benefit, it may be enforced by the corporation in its own name. —LILLARD v. DECATUR COTTON SEED OIL CO., Tex., 35 S. W. Rep. 792.

38. CORPORATIONS—Authority of General Manager.—A person in charge of a branch store belonging to a foreign corporation, who orders goods from the main house, and sells them for cash or credit, in his discretion, incurs and discharges all incidental expenses, keeps the bank account and draws checks thereon, makes contract for the rent of the store and for insurance, etc., is a general manager, and is authorized to execute a renewal of the store lease for a period of five years, unaffected by any secret limitation on his authority. — PHILLIPS & BUTTORFF MANUF'G CO. v. WHITNEY, Ala., 20 South. Rep. 333.

39. CORPORATIONS—Contracts—Evidence.—A contract signed by the president and secretary of a corporation to which the corporate seal is attached, is *prima facie* evidence that the contract is a corporation contract.—ANDRES v. FRY, Cal., 45 Pac. Rep. 584.

40. CORPORATIONS—Duties of Secretary of State.—The duty of the secretary of State, on presentation of articles of incorporation and tender of proper fees, to file and record such articles, and upon request issue a duly certified copy thereof, is controlled by the statutes of the State, and not by the discretion of the officer.—STATE v. TAYLOR, Ohio, 44 N. E. Rep. 513.

41. CORPORATIONS—Foreign Corporations—Contracts.—Acts 1891, ch. 122, § 8, provides that it shall be unlawful for any foreign corporation to do or attempt to do "any business, or to own or acquire any property," in the State, without having complied with the act, and its violation shall subject the offender to a fine, etc.: Held, that a note given to a foreign insurance company by its agents for uncollected premiums on policies issued by it after it was prohibited by such act from doing business was void; and this, though the contract of the agents, made before the act was passed, required them to be responsible for all premiums on policies issued through them.—NEW HAMPSHIRE INS. CO. v. KENNEDY, Tenn., 36 S. W. Rep. 709.

42. CORPORATIONS—Foreign Corporations—Contractual Rights.—Where a foreign corporation has not complied with the provisions of the Pennsylvania statute (Act April 22, 1874), making registration in the office of the secretary of the commonwealth a condition precedent to transacting business in that State, there can be no recovery by it in a suit upon a bond conditioned for the faithful performance of the duty of an agent appointed by it to transact its business in that State.—MCCANNA & FRASER CO. v. CITIZENS' TRUST & SURETY CO. OF PHILADELPHIA, U. S. C. C. (Penn.), 74 Fed. Rep. 597.

43. CORPORATIONS—Foreign Corporations—Prolonging Existence for Purposes of Suit.—State statutes which provide that corporations shall continue to exist for a certain time after the time fixed for dissolution, for the purpose of prosecuting and defending suits, and that no body or persons acting as a corporation shall set up the want of a legal organization as a defense to a suit against them as a corporation (McClel. Dig. Fla. p. 234, §§ 27, 28), do not control or affect foreign corporations merely doing business in the State; and a suit against such a corporation abates upon its dissolution, so that, if a judgment be thereafter entered against it, the same is void. — MARION PHOSPHATE CO. v. PERRY, U. S. C. C. of App., 74 Fed. Rep. 425.

44. CORPORATIONS—Insolvent Corporations—Powers and Liabilities. — After a corporation is declared insolvent under the provisions of the corporation act, and an injunction has been issued, and a receiver appointed, the corporate existence continues for four months with unimpaired corporate powers except as such powers are impliedly curtailed by the powers conferred upon the receiver. After the lapse of four months the corporation retains power to collect its property and assets, and to sell the same, and to distribute the proceeds among its creditors and stockholders—LINN v. JOSEPH DIXON CRUCIBLE CO., N. J., 35 Atl. Rep. 2.

45. COUNTIES — Legality of Indebtedness — Presumption.—To enjoin a county levy on the claim that it goes to pay indebtedness incurred in violation of section 8, art. 10, of the constitution, it must affirmatively appear that such indebtedness is in violation of the constitution. He who asserts it must show it. It will not be presumed to be so.—ARMSTRONG v. TAYLOR COUNTY COURT, W. Va., 24 S. E. Rep. 998.

46. COUNTY RECORDER — Compensation. — Under Const. art. 9, § 13, declaring that the fees of a county or municipal officer shall not exceed a specified sum "exclusive of the salaries actually paid to his necessary deputies;" and Rev. St. 1889, § 7450 (in force at the time the constitution was adopted), providing that all fees received by a county recorder over and above the amount fixed as his salary, after paying out such amounts for deputies and assistants "as the county court may deem necessary," shall be paid into the county treasury, etc., a recorder is entitled, as a matter of right, to retain out of the fees of his office an amount sufficient to pay reasonable compensation to necessary assistants, and the allowance of such reasonable compensation is not a matter of mere discretion with the court.—STATE v. KING, Mo., 36 S. W. Rep. 681.

47. COURTS — Jurisdiction — Change of Venue. — The fact that a new county is formed, and courts established therein, does not authorize the court of a county wherein actions are pending to transfer them to the new county, because the subject of the suit is situated in, or the parties thereto reside within, the territorial limits of the new county.—MCNEW v. WILLIAMS, Ky., 36 S. W. Rep. 687.

48. CRIMINAL EVIDENCE—Admissions.—A confession by defendant's accomplice, implicating defendant, and made in his presence, and which he did not deny, is admissible against defendant; especially where the court admonishes the jury to receive such evidence with great caution.—GREEN v. STATE, Tenn., 36 S. W. Rep. 700.

49. CRIMINAL EVIDENCE—Assault with Intent to Kill.—On a prosecution for assault with intent to kill, in which defendant, as accessory, participated, evidence that the assault grew out of a difficulty, immediately preceding it, between the principal and another, which took place in the presence of the party assaulted, is admissible.—ELMORE v. STATE, Ala., 20 South. Rep. 823.

50. CRIMINAL EVIDENCE — Homicide. — In a trial for murder, statements of defendant, to whom deceased had used grossly insulting epithets, on being advised by a friend to go home before deceased returned again, that "I will not run from him," and that "I can't take everything," are admissible as tending to show that the subsequent killing of deceased was in resentment of the latter's abuse, and not in self-defense.—ALLEN v. STATE, Ala., 20 South. Rep. 490.

51. CRIMINAL EVIDENCE—Homicide—Declarations of Deceased.—In a murder case, it appeared that the accused was jealous of deceased, and had threatened to kill him; that late one night deceased went to a woman's house and was given permission to remain; that, while standing in the open door, he was shot by some one standing outside the door; that deceased staggered off a few yards outside the house, and on his call the woman and her elder child, who were in bed, hurried to him; that, in reply to a question by them, deceased answered, "I am shot," and to another question, "Yes, Charlie [accused] has shot me to death." The interval between the shot and the answers was given by the woman and child at from 5 to 10 minutes, but the circumstances were so minutely described by them as to show that the time was even less: Held, that the answers were a part of the *res gestæ*.—STATE v. ARNOLD, S. Car., 24 S. E. Rep. 926.

52. CRIMINAL EVIDENCE—Homicide—Statement of Accused.—On trial for murder, the statement of the defendant made at the coroner's inquest, before he was accused or in custody, is not inadmissible against him as an involuntary statement, because made under oath.—WILSON v. STATE, Ala., 20 South. Rep. 415.

53. CRIMINAL EVIDENCE—Larceny.—In a prosecution for larceny, testimony as to a conversation between prosecutor and the person by whom the stolen articles were discovered in defendant's basket, at the time of the discovery, held in defendant's absence, is inadmissible.—HAYS v. STATE, Ala., 20 South. Rep. 322.

54. CRIMINAL EVIDENCE—Perjury.—On an indictment for perjury committed on a trial of another for burglary, the jury in the burglary case may testify as to the evidence given by the accused in such case to show its materiality.—PEOPLE v. OSTRANDER, Mich., 67 N. W. Rep. 1079.

55. CRIMINAL EVIDENCE — Perjury. — On a murder trial, P, a State's witness, confessed that he and defendant committed the crime, and that on the night preceding the same they slept together at the home of defendant's mother. W, defendant's brother, testified that another person slept with defendant that night, and that P was not there: Held, that W's testimony was material, within the law of perjury.—PEOPLE v. MACARD, Mich., 67 N. W. Rep. 968.

56. CRIMINAL EVIDENCE—Testimony at Former Trial.—Evidence that a witness who testified for the State at a former trial had been absent for a year from his home, which was in the county in which the trial was had, does not sufficiently show his absence from the State, so as to authorize the admission of evidence of his testimony.—WHEAT v. STATE, Ala., 20 South. Rep. 449.

57. CRIMINAL LAW—Amendment of Order.—The judge having stated in open court, on the day that court adjourned, that he had determined to amend an order sustaining an appeal from a conviction and discharging defendant, and remand the case for new trial, and having at the same time made an entry on the docket that a new trial was ordered, and requested one of the attorneys to prepare the order, the court can, after adjournment, make and file the order as of the day of adjournment.—STATE v. FULLMORE, S. Car., 24 S. E. Rep. 1026.

58. CRIMINAL LAW — Assault — Self-Defense.—One, to invoke the law of self-defense, must have been free from all fault or wrongdoing which had the effect to provoke or bring on the difficulty. To be reasonably free from fault is not sufficient.—HOWARD v. STATE, Ala., 20 South. Rep. 365.

59. CRIMINAL LAW — False Pretenses. — In an indictment for obtaining goods by false pretenses, the ownership of the property alleged to have been obtained by reason of such pretenses is a material averment, and should be stated in an information or indictment for such offense. If the property fraudulently obtained was money, the same rule applies, and the ownership should be directly alleged. — MOULIE v. STATE, Fla., 20 South. Rep. 554.

60. CRIMINAL LAW—Forgery—Proof of Handwriting.—Where, in a prosecution for forgery, witnesses for the State testify to having seen defendant make the forged signature, his defense being an *alibi*, defendant may put in evidence, for the purpose of comparing the handwriting of the person who executed the forgery with defendant's, a letter written by him some time before the accusation was brought against him.—MALLORY v. STATE, Tex., 36 S. W. Rep. 751.

61. CRIMINAL LAW — Former Jeopardy.—Whenever, either in felony or misdemeanor, the judge discovers anything that will render a verdict against the prisoner void, or subject to be avoided by him, or will render it impossible that a verdict should be reached, anything, in other words, establishing that no jeopardy has really attached to the prisoner, and that any further progressing in the trial will be fruitless, he may adjudge the fact, put the adjudication on record, and discharge the jury. Then, the *prima facie* jeopardy appearing of record, matter nullifying it will appear also, and the defendant will be properly held for further proceedings.—TERVIN v. STATE, Fla., 20 South. Rep. 550.

62. CRIMINAL LAW — Indictment. — Where an indictment charges two offenses, and does not show on its face whether it merely charges the same offense in different forms, or two distinct offenses, and a conviction of two distinct offenses is had thereunder, the misjoinder is available to defendant on writ of error, though, when the evidence disclosed that distinct offenses were charged, his counsel failed to interpose any objection.—WHITE v. PEOPLE, Colo., 45 Pac. Rep. 539.

63. CRIMINAL LAW—Intoxication as a Defense.—While voluntary intoxication is no excuse for crime, yet, under the laws of this State, it cannot convert a mere accident into a felony.—STATE v. CROSS, W. Va., 24 S. E. Rep. 996.

64. CRIMINAL LAW—Offense Near County Boundaries.—Under Code, § 3720, providing that when an offense is comitted on the boundary of two or more counties, or within a quarter of a mile thereof, the jurisdiction is in either county, one illegally selling liquor in Butler county, but within a quarter of a mile of the boundary line between the counties of Butler and Conecuh, cannot be convicted in the latter county, where each county has a statute, prohibiting the sale of intoxicants.—MCKAY v. STATE, Ala., 20 South. Rep. 455.

65. CRIMINAL LAW — Reasonable Doubt. — The constitutional provision guarantying to an accused the right to be heard by himself and counsel does not deprive the court of the discretionary power to limit the argument of defendant's counsel to a certain length of time.—PEAGLER v. STATE, Ala., 20 South. Rep. 363.

66. CRIMINAL LAW — Slander — Indictment.—An information under our statute (section 2419, Rev. St.) prescribing a penalty against "whoever speaks of and concerning any woman, married or unmarried, falsely and maliciously, imputing to her a want of chastity," should not only set out the words constituting the oral slander, but should also charge that they were uttered or spoken in the presence of some one; and the better practice would be to set out the names, or some of them, of the persons before whom they were uttered or spoken.—BURNHAM v. STATE, Fla., 20 South. Rep. 548.

67. CRIMINAL LAW—Venue—Proof.—The venue in a criminal case need not be proved beyond a reasonable doubt.—WILSON v. STATE, Ark., 36 S. W. Rep. 842.

68. CRIMINAL PRACTICE — Disorderly House—Indictment.—An indictment charging that the defendant kept a disorderly house, in that he did unlawfully cause and procure certain persons, women and men, of evil name and fame, to frequent and come together at unlawful times, drinking, indecently dancing, and misbehaving, to the common nuisance and evil example, etc., is good as a common-law indictment for keeping a disorderly house.—COHN v. STATE, Ala., 20 South. Rep. 380.

69. CRIMINAL PRACTICE — Indictment — Averment of Place.—An indictment which fails to state the place where the crime was committed is fatally defective, notwithstanding an averment that the act was done "within the jurisdiction of this court," which is a mere conclusion of law.—EARLY v. COMMONWEALTH, Va., 24 S. E. Rep. 936.

70. CRIMINAL PRACTICE — Indictment — Disorderly House.—An indictment for keeping a house of ill fame may charge the offense as committed on a particular day, and divers days between that and another day previous thereto.—PEOPLE v. RUSSELL, Mich., 67 N. W. Rep. 1099.

71. CRIMINAL PRACTICE — Indictment—Misnomer.—A plea in abatement for misnomer, in that defendant's full name was "John Frazer Janes," whereas he is indicted as "J. F. Janes," held bad, because it failed to further allege that defendant was not known or called by the name of "J. F. Janes," or that he had theretofore been known and called by the name of "John Frazer Janes."—UNITED STATES v. JANES, U. S. D. C. (Cal.), 74 Fed. Rep. 543.

72. CURTESY — Judicial Sale of Vacant Land.—By virtue of a decree of confirmation of a judicial sale of vacant and unoccupied lots or lands, the purchaser has, by construction of law, such possession as amounts to such seisin in fact as will entitle the husband of such purchaser to curtesy in such lots or land.—SEIN V. O'GRADY, W. Va., 24 S. E. Rep. 994.

73. DAMAGES — Injuries—Measure of Damages.—The action being for damages resulting from personal injuries, and the plaintiff having neither alleged nor proved anything as to lost time, it was error to charge that the plaintiff "would be entitled to recover, also, for lost time in consequence of the injury sustained," and that the jury could "look to the evidence, and see how much time he did lose, and what his time was worth."—WESTERN & A. R. CO. V. PATILLO, Ga., 24 S. E. Rep. 958.

74. DEED—Alteration by Grantor.—After a deed has been delivered and recorded, the grantor has no right to alter it, and nothing that he could do or assent to could change the effect of the deed.—HANCOCK V. DODD, Tenn., 36 S. W. Rep. 742.

75. DEED—Boundaries — Natural Objects.—The fifth call of a land patent was: "Thence to a stake on the top of Looney's Ridge," and the sixth call read: "And with the same N. 88 degrees E. 422 poles, to a stake:" Held, that the words "with the same" required the last to run with the top of the ridge, such natural boundary prevailing over the course and distance in case of conflict.—CLARKSTON V. VIRGINIA COAL & IRON CO., Va., 24 S. E. Rep. 937.

76. DEED—Consideration—Release of Claims.—Where a deed provided that it was "made by the grantors and accepted by the grantee in full satisfaction of all claims of the grantee against the grantors, or either of them, to this date, and of any and all kinds, and in satisfaction of any pretended claims of the grantee against" a certain estate, such stipulation is not contractual, but is in the nature of a receipt or release, and parol evidence is admissible to show the nature of the claims included therein.—FRENCH V. ARNETT, Ind., 44 N. E. Rep. 551.

77. DEED—Patents—Record of Field Notes.—The failure to record the field notes in the county where a portion of the land was situated will not invalidate the patent from the State, as against persons who settled upon that portion thereof, intending to acquire it as a homestead, but who never complied with the provisions of the statute regulating the subject.—THOMPSON V. FORD, Tex., 36 S. W. Rep. 783.

78. DEED—Persons Non Compos Mentis — Tender.—One who takes a conveyance from a person whom he knows to be of unsound mind is not entitled to a tender of the price as a prerequisite to an avoidance of the instrument.—THRASH V. STARBUCK, Ind., 44 N. E. Rep. 543.

79. DEED — Sufficiency.—The words "transfer" and "assign" are not the usual operative words of a conveyance of real estate, but are sufficient to transfer the title. No particular form of words is necessary to effect a valid conveyance of lands. If the words used show an intent to convey a present interest, they are sufficient for that purpose.—SANDERS V. RANSOM, Fla., 20 South. Rep. 530.

80. DEPOSITIONS—Motion to Suppress.—A motion to suppress a deposition, or a portion thereof, for defects which may be remedied on a re-examination of the witness, must be made before the trial is begun; but if the evidence is illegal, and it does not appear that it could be rendered legal on a re-examination, it may be suppressed at any stage of the cause.—CARLISLE V. HUMES, Ala., 20 South. Rep. 462.

81. DESCENT AND DISTRIBUTION—Adopted Child.—A child adopted in a sister State, in substantial compliance with her statutes, will inherit lands of the deceased adopting parent in this State on equal terms with a child of such parent born in wedlock.—GRAY V. HOLMES, Kan., 45 Pac. Rep. 596.

82. DESCENT AND DISTRIBUTION — Advancement.—Where an ancestor applied a portion of his estate to obtain the release of his daughter's husband from prison, it should not be construed as an advancement to the daughter, in the absence of anything to show that such was the intention of the ancestor.—BOOTH V. FOSTER, Ala., 20 South. Rep. 356.

83. DESCENT AND DISTRIBUTION — Issue of Void Marriage.—Gen. St. 1888, p. 716, § 3, providing that "the issue of an illegal or void marriage shall nevertheless be legitimate," applies to marriages without as well as within the State, and entitles the issue of a marriage contracted in a State where it was void to inherit property in Kentucky from their parents and collateral kindred.—LEONARD V. BRASWELL, Ky., 36 S. W. Rep. 685.

84. DESCENT AND DISTRIBUTION—Rights of Distributees.—Damages recovered by an administrator for the negligent killing of his intestate are assets in his hands for the purposes of distribution only, and are not subject to the payment of decedent's debts.—GRISWOLD V. GRISWOLD, Ala., 20 South. Rep. 437.

85. DETINUE—Evidence.—In detinue, to authorize a recovery, it is essential that plaintiff prove possession of the property by defendant at the time of the commencement of the action.—BERLIN MACH. WORKS V. ALABAMA CITY FURNITURE CO., Ala., 20 South. Rep. 418.

86. DURESS—What Constitutes.—Plaintiffs contracted to do certain paving for defendant city, the work to be completed by September 30th, with a stipulation that plaintiffs should pay $25 per day for each day after the specified time. The work was not completed until November 8th, and the board of public works refused to certify the acceptance of the work until the penalty was paid. Plaintiffs paid the penalty under protest, and brought an action for recovery of the amount as paid under duress: Held that, the plaintiffs having had full knowledge of the facts, and of their rights under the contract, there was no duress.—LAIDLAW V. CITY OF DETROIT, Mich., 67 N. W. Rep. 967.

87. ELECTIONS — Qualifications of Voters.—On appeal from an order dismissing a petition to review the action of a registration officer in striking the name of petitioner from the list of voters on the ground that he was disqualified under the provisions of Act 1890, ch. 573, it appeared that the act referred to had been wholly repealed by Act 1896, ch. 202, providing for the registration of voters: Held that, the determination of the appeal being governed by existing law, in view of which the petitioner had suffered no injury, the appeal will be dismissed.—MELOY V. SCOTT, Md., 35 Atl. Rep. 20.

88. ELECTION CONTEST—Sufficiency of Complaint.—In an election contest a complaint alleging that, if certain illegal votes counted for the contestee had been rejected, contestant would have received a majority, is insufficient, in that it does not allege that, if such illegal votes were rejected, the number of legal votes cast for contestee would be less than the number of legal votes cast for contestant, as required by Acts 1892-93, p. 468, § 8, relating to election contests.—WADE V. OATES, Ala., 10 South. Rep. 495.

89. EQUITY—Mistakes of Law.—It is only in special cases that equity will relieve a party from the consequences of a pure mistake of law. It will not do so when the opposite party is blameless in the premises, and the parties cannot be replaced in their former positions.—TRUESDALE V. SIDLE, Minn., 67 N. W. Rep. 1004.

90. ESTATES—Present and Expectant Life Estates.—Plaintiff owned a present life estate, and the fee in remainder, subject to an expectant life estate in defendant, contingent on plaintiff's death. Defendant's life estate and the fee were subject to a mortgage which was purchased by the plaintiff: Held, that the defendant was liable to the plaintiff for a share of the interest on the mortgage debt due or to become due during the expectancy, proportionate to the relative values of the estates.—DAMM V. DAMM, Mich., 67 N. W. Rep. 964.

91. ESTOPPEL IN PAIS.—Where an attorney forecloses a mortgage running to his client on land to which the attorney claims title superior to that of the mortgagor, and permits title to pass to the client under a sheriff's deed, he is estopped from setting up his title against an innocent purchaser from his client.—WALKER v. BOTTOMLEY, Mich., 67 N. W. Rep. 1083.

92. ESTOPPEL TO DENY AGENT'S AUTHORITY.—A principal cannot receive and retain the benefits of a transaction, and at the same time deny the authority of the agent by whom it was consummated.—BANK OF LAKIN v. NATIONAL BANK OF COMMERCE OF KANSAS CITY, Kan., 45 Pac. Rep. 587.

93. EVIDENCE—Parol Evidence to Explain Indorsement.—Defendant executed her note to plaintiff dated May 1st, for money due for services rendered prior to January 1st. Subsequently there was indorsed on the note a credit, the indorsement reciting that it was to be applied in payment of interest "from January 1, 1894, till June 1, as far as interest calls:" Held, that parol evidence was admissible to show the understanding of the parties in regard to the indorsement.—RAWLINGS v. FISHER, Mich., 67 N. W. Rep. 977.

94. EXECUTION—Abandonment.—Mere delivery of a writ of execution, with levy indorsed thereon, to the justice who issued the same, does not constitute an abandonment of the execution.—FRIYER v. MCNAUGHTON, Mich., 67 N. W. Rep. 978.

95. EXPERT TESTIMONY—Admissibility.—The opinion of a medical witness as to the mental condition of a person at a certain time, based only on a physical examination made 18 months afterwards, where such witness is not informed as to the mental condition at the time when the mental capacity was in question, is largely conjectural, and is too uncertain and speculative to be valuable or admissible.—MISSOURI PAC. RY. CO. v. LOVELACE, Kan., 45 Pac. Rep. 590.

96. EXTORTION—Registration of Mortgages—Illegal Fees.—In an action against a probate judge by a mortgagor for the statutory penalty for charging an unlawful fee for recording the mortgage, under Code, § 3680, which declares the penalty, and provides that it shall be recoverable by the party "aggrieved," plaintiff, if the fee was paid by another, must prove that such other, in paying it, acted as his agent.—LEE v. LIDE, Ala., 20 South. Rep. 410.

97. FALSE IMPRISONMENT—Authority of Militia Officer.—A captain of a company of the National Guard of this State, when it is not acting as a military force, is not authorized to summarily punish by imprisonment a member of his company for a refusal to obey his orders.—NIXON v. REEVES, Minn., 67 N. W. Rep. 989.

98. FALSE REPRESENTATIONS—Intentions.—In an action to enforce a vendor's lien, where defendant by way of cross bill, pleaded that the vendor had induced the purchase by fraudulently representing that financial arrangements had been made to construct certain improvements, proof of representations that improvements would be made is insufficient, since it shows merely representations as to intention, and not as to existing facts.—ORR v. GOODLOE, Va., 24 S. E. Rep. 1114.

99. FEDERAL OFFENSE—Indictment—Lottery.—An allegation in an indictment under Rev. St. § 3894, for depositing in the post office a letter concerning a lottery, that the defendant knowingly deposited "a certain letter concerning a certain lottery conducted by a corporation called," etc., sufficiently shows assuming such showing to be required by the statute, that the letter concerned a lottery existing at the time the letter was mailed. Such an indictment need not allege specifically facts showing the enterprise to be a lottery. A general averment to that effect is sufficient.—UNITED STATES v. FULKERSON, U. S. D. C. (Cal.), 74 Fed. Rep. 631.

100. FERRY LAW—Constitutionality—Monopolies.—The statute authorizing boards of county commissioners of the several counties of the State to grant exclusive ferry franchises for a period of years to the highest bidder therefor is not repugnant to section 28 of the constitution, which declares that no privileges or immunities shall be granted to any citizen or class of citizens which shall not be granted to all citizens on the same terms.—PATTERSON v. WOLLMAN, N. Dak., 67 N. W. Rep. 1040.

101. FRAUDS, STATUTE OF—Agreements Relating to Land.—An agreement between a grantor and grantee that the grantee shall build a certain portion of the fence between the land conveyed and certain other lands of the grantor, in part consideration for the deed, need not be in writing.—DODDER v. SNYDER, Mich., 67 N. W. Rep. 1101.

102. FRAUDULENT CONVEYANCES—Insolvent Corporation.—Where an insolvent corporation transferred all its property to one of its directors, who assumed the debts of the corporation, and agreed to pay them in 18 months, such transfer must be construed as intended to hinder, delay, and defraud creditors, and, as such, is void.—BERNEY NAT. BANK v. GUYON, Ala., 20 South. Rep. 520.

103. FRAUDULENT CONVEYANCES — Knowledge of Vendee. — When the circumstances surrounding a fraudulent transfer of property by an insolvent debtor are out of the usual course of business, and are such as to excite the suspicions of a reasonably prudent man, the jury may infer knowledge, on the part of the vendee, of the fraudulent character of the transaction.—HASKETT v. AUHL, Kan., 45 Pac. Rep. 608.

104. FRAUDULENT CONVEYANCE — Presumption of Fraud.—A voluntary conveyance by one who is indebted is presumptively fraudulent when attacked by a judgment creditor upon a debt existing at the time of its execution. In such cases it is not necessary to show that the debtor was actually insolvent at the time he executed the conveyance.—MCKEOWN v. ALLEN, Fla., 20 South. Rep. 556.

105. FRAUDULENT CONVEYANCES—Rights of Creditors.—A failing debtor made a voluntary transfer of certain valuable real estate to one F, for the purpose of defeating his creditors. F held the property until his death, accounting for a time to the debtor for the rents, but afterwards refusing to surrender the property to him; and, after F's death, his heirs held the property and collected the rents. Certain creditors of the original owner took judgment against him, levied execution on the land after F's death, and caused it to be sold as the property of the judgment debtor, plaintiff buying it in at the sale. Plaintiff then brought suit to establish his title to the land, and, in such suit, proved the facts as to the character of the original transfer, both by circumstantial evidence and by the admission of the parties: Held that, although no court would interfere as between the original owner of the land and F, plaintiff, as a creditor of the fraudulent grantor, was entitled to the assistance of a court of equity, and his title should be established.—FARRAR v. BERNHEIM, U. S. C. C. of App., 74 Fed. Rep. 435.

106. FRAUDULENT CONVEYANCE—What Constitutes.—A deed will not be declared fraudulent as to a creditor of the grantor, where it appears that such creditor knew of the deed as soon as it was made, but that the grantee was ignorant of the creditor's claim for two years after the execution of the deed, and that the consideration paid exceeded the value of the property.—DELAVAN v. WRIGHT, Mich., 67 N. W. Rep. 1110.

107. GARNISHMENT—Lien — Assigned Judgment.—S transferred to B a judgment and other property, by an assignment absolute in form, and apparently accompanied by delivery, though as to S and his creditors it was probably a mortgage: Held, that a garnishment of the judgment debtor by S's creditors after the assignment to B could not reach the judgment or its proceeds in the absence of fraud in the assignment.—BLUMENTHAL v. SIMONS, Mich., 67 N. W. Rep. 1102.

108. GARNISHMENT — Salary Payable in Advance.—Where one hires out by the month, from the first of one month to the first of the next month, with provision that he be paid in advance, the drawing out in ad-

vance of only part of a month's salary will leave the balance subject to garnishment, though paid before his services are rendered.—GRAY V. PERRY HARDWARE CO., Ala., 20 South. Rep. 368.

109. HIGHWAYS — Improvements — Petition.—Under Laws 1895, p. 424, providing for the permanent improvement of public roads, the petition was sufficient, though not actually signed by the requisite number of landowners, if the names of those not actually signing were placed there by previous authority, or with the subsequent ratification of the owners.—STATE V. BOARD OF CHOSEN FREEHOLDERS OF SOMERSET COUNTY, N. J., 33 Atl. Rep. 1.

110. HOMESTEAD—Extension of City Limits.—A homestead right, once acquired, is a valuable one; and an act of the legislature extending the limits of a city so as to include the homestead, while it retains all its characteristics as such, will not operate to reduce or diminish the rights of the owner of the homestead therein, unless the land surrounding it has become urban in its character.—KIEWERT V. ANDERSON, Minn., 67 N. W. Rep. 1031.

111. HUSBAND AND WIFE—Necessaries Sold to Wife.—A husband is not liable at common law for necessaries sold the wife wholly on her credit, and charged to her only, without his implied assent that they were to be charged to him.—GAFFORD V. DUNHAM, Ala., 20 South. Rep. 346.

112. INFANTS—Limitations of Actions.—A cause of action in favor of an infant, for personal injuries sustained, may be brought at any time during infancy, and will in no event be barred by the two-years limitation until one year after the disability of infancy has been removed.—MISSOURI PAC. RY. CO. V. COOPER, Kan., 45 Pac. Rep. 587.

113. INJUNCTION — Adjoining Property Owners.—Injunction will lie to restrain an adjoining property owner from maintaining a fence 11 feet high on the division line, which shuts off the circulation of air from plaintiff's building, thereby rendering it damp and unhealthy.—PECK V. ROE, Mich., 67 N. W. Rep. 1060.

114. INJUNCTION — Review on Appeal. — Where the question of granting or refusing an injunction depended upon conflicting evidence, this court will not interfere with the discretion of the trial judge, especially where the judgment excepted to is a refusal to grant an interlocutory injunction, and such refusal is apparently supported by a preponderance of the evidence.—ROFF V. MCARTHUR, Ga., 24 S. E. Rep. 955.

115. INSOLVENCY—Proceedings—Partnership and Individual Creditors.—In insolvency proceedings as to a single member of a partnership, firm creditors, as well as individual creditors, may prove their claims (though, in distribution of assets, individual claims have preference), and vote in the choice of assignees and on the discharge of the insolvent; and that though insolvent's estate has no assets.—CLARK V. STANWOOD, Mass., 44 N. E. Rep. 537.

116. INSURANCE—Award of Appraisers.—A fire policy provided that the loss should be determined by two appraisers, the company and the insured each selecting one, and that the two should select one umpire, to whom they should submit their differences if they failed to agree: Held that, where one of the appraisers ceased to act, and the appraisement was completed by the other appraiser and the umpire, the award was not in accordance with the policy.—CALEDONIAN INS. CO., OF SCOTLAND V. TRAUB, Md., 35 Atl. Rep. 13.

117. INSURANCE—Conditions—Arbitration Clause.—A clause in an insurance policy requiring insured to submit to arbitration the amount of the loss, before suit on the policy, is binding.—WESTERN ASSUR. CO. V. HALL, Ala., 20 South. Rep. 447.

118. INSURANCE—Payment of Premiums.—A policy cannot be forfeited for non-payment of the premium where no provision was made therefor in the policy, and where the policy was delivered with the understanding that the insured should have a reasonable time in which to pay the premium.—OHIO FARMERS' INS. CO. V. STOWMAN, Ind., 44 N. E. Rep. 558.

119. INTERSTATE COMMERCE ACT—Wholly in one State —The fact that a railroad lies wholly within one State does not exempt it from the obligations imposed by the interstate commerce act, if the transportation over it is part of a shipment from one State to another, or to or from a foreign country.—AUGUSTA S. R. CO. V. WRIGHTSVILLE & T. R. CO., U. S. C. C. (Ga.), 74 Fed. Rep. 522.

120. INTOXICATING LIQUORS — License.—A municipal ordinance making it a condition precedent to the issuing of a license to keep a dramshop that the applicant shall present to the mayor a petition of a majority of the legal voters in the defined territory is not void as a delegation to the legal voters of the power to license dramshops.—SWIFT V. PEOPLE, Ill., 44 N. E. Rep. 528.

121. INTOXICATING LIQUORS — Local Option. — Where there has been an election under the local option article of our constitution of 1885, and legislation in pursuance thereof, with the result adverse to the sale of intoxicating liquors, wines, and beer in any county or election district in this State during the period of the operation of the result of such election, all statutes authorizing or licensing the sale of such liquors, wines, and beer are suspended.—CASON V. STATE, Fla., 20 South. Rep. 547.

122. JUDGMENT—Joint Obligation.—Where the plaintiff in an action brought upon a joint contract obligation against the joint debtors elects, upon default of one of them to answer, to enter judgment against such defendant, the judgment is a bar to a subsequent action against the others, the debt being merged in the judgment.—DAVISON V. HARMON, Minn., 67 N. W. Rep. 1015.

123. JUDGMENT — Scire Facias — Missouri Statute.—Under the practice in Missouri, a writ of *scire facias* to revive a judgment, which has been assigned, is not demurrable because issued in the name of the assignor, but it is sufficient if the writ itself shows that it was issued on behalf of and to the use of the assignee, and permission may be given to amend the writ by striking out the name of the assignor where it is mere surplusage.—WONDERLY V. LAFAYETTE COUNTY, U. S. C. C. (Mo.), 74 Fed. Rep. 702.

124. JUDGMENT — Setting Aside. — A plaintiff is entitled to have a judgment dismissing an action for want of prosecution set aside at a succeeding term where he shows a meritorious claim, and that he was diligent, but was prevented from prosecuting the action by the fact that he resided in another county, and was informed by both the clerk of the court and by the attorneys for the defendant that no more civil cases would be tried at the term at which the dismissal was taken, and did not know of the calling of the case until after the adjournment of the term.—SMITH V. PATRICK, Tex., 36 S. W. Rep. 762.

125. JUDGMENT — Violation of City Ordinance — Collateral Attack.—A judgment for costs in favor of one who was found not guilty on a prosecution for violating a city ordinance, which erroneously includes items not properly taxable, is not void, and hence no subject to attack in *mandamus* proceedings to compel city officers to issue a warrant for the payment of such costs.—MOTT V. STATE, Ind., 44 N. E. Rep. 548.

126. JUDGMENTS OF OTHER STATES—Faith and Credit. —In an action on a judgment rendered by a court of another State, a defense based on alleged want of authority of that court to render such judgment must, in view of the constitutional requirement as to full faith and credit, show facts tending to impeach the jurisdiction of that court, either as to the subject-matter or the person.—L'ENGLE V. GATES, U. S. C. C. (Wis.), 74 Fed. Rep. 513.

127. JUDGMENT REVIVED AGAINST EXECUTOR.—Where, on *scire facias*, judgment recovered against a decedent is revived against his executor, without any answer

being interposed by the latter to said writ, the judgment is conclusive upon the executor that he has assets to satisfy the judgments, and he cannot afterwards defeat, by bill in chancery, the satisfaction of the judgment from his own goods, on the ground of "no assets" or "*plene administravit*," unless he was prevented from making such defense by fraud or accident.—SIMONS v. PAGE, Tenn., 67 N. W. Rep. 843.

128. JUSTICE COURT—Waiver of Error.—After the disagreement and discharge of the jury, a written stipulation providing that the case might be decided by the justice upon the proofs taken upon the trial, and that all questions raised upon the trial should be saved to the respective parties, was not a waiver of error in the admission of evidence on the trial.—DROVERS' NAT. BANK v. BLUE, Mich., 67 N. W. Rep. 1105.

129. LANDLORD AND TENANT—Construction of Lease.—Under a lease for a term of years, "or so long as oil or gas is found on the premises," providing for the payment of a specified rental "each year in advance for every well from which gas is used off the premises," the lessee is liable only so long as he uses the gas; and upon the failure of the well, or if it becomes impracticable to use the gas therefrom, the lessee is released from all liability.—INDIANAPOLIS GAS CO. v. TETERS, Ind., 44 N. E. Rep. 549.

130. LANDLORD AND TENANT — Judgment of Restitution.—Code, art. 53, gives a tenant against whom judgment of restitution has been rendered the right to appeal therefrom, and pending appeal to keep possession of the premises, on condition that he secures by a sufficient bond payment of rent in arrears and that accruing pending appeal: Held, that a landlord, by accepting payment of rent thus secured after the appeal has been determined against the tenant, does not waive his right to regain possession under the judgment of restitution.—HOPKINS v. HOLLAND, Md., 35 Atl. Rep. 11.

131. LIBEL—Privileged Publication.—The publication in a newspaper of a false accusation against a man, though based upon information giving reasonable ground for belief in its truth, is not justified by the fact that the man against whom the charge is made is an applicant for a federal office, to be filled by appointment by the president, and is not privileged.—GEORGE KNAPP & CO. v. CAMPBELL, Tex., 36 S. W. Rep. 765.

132. LIEN—Bona Fide Purchaser—Unrecorded Lien.—A *bona fide* purchaser of the absolute title of real estate, who bought without notice of a material-man's lien upon the same, which at the time of the purchase had been neither recorded nor foreclosed, took the property divested of such lien.—ASHMORE v. WHATLEY, Ga., 24 S. E. Rep. 941.

133. LIMITATION OF ACTIONS.—Gen. St. 1894, § 5137, limiting the time in which certain actions may be brought, reads as follows: "Within three years an action against a sheriff, coroner or constable upon a liability by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty including the non-payment of money collected upon execution:" Held, that the mere failure of a sheriff, receiving money on a redemption of real estate made through him, to pay the same to the party entitled thereto before any demand is made upon him for it, is not the omission of an official duty, within the meaning of such statute, and in such case an action against the sheriff for the recovery of the money is not barred in three years from the time he received it.—HALL v. SWENSON, Minn., 67 N. W. Rep. 1024.

134. MALICIOUS PROSECUTION OF ATTACHMENT—Evidence.—In an action for malicious prosecution of an attachment, evidence of knowledge of an agent of defendant, who was not, however, her agent for the purpose of suing out the writ, defendant having sued it out herself, is not admissible, such knowledge not having been communicated to defendant.—BROWN v. MASTER, Ala., 20 South. Rep. 344.

135. MANDAMUS — Water for Irrigation.—Where a petition for *mandamus* to compel the delivery of water for irrigation alleges title in the petitioner to the water right under a contract between his own and defendant's grantors, and facts which, if his title under the contract was established, would entitle him to the writ, and on trial no evidence of these facts is adduced, but it appears from the evidence and the theories advanced on the trial that the proceeding has been instituted to obtain a construction of the contract, and to establish the title of the petitioner under it to the water right, the petition should be dismissed, since relief of that nature cannot be granted in *mandamus* proceedings.—FARMERS' HIGH LINE CANAL & RESERVOIR CO. v. PEOPLE, Colo., 45 Pac. Rep. 543.

136. MARITIME LIEN — Partial Payment.—Where the last partial payment for work to be done by plaintiffs on a yacht was not to be made under the contract until the work was completed and accepted, plaintiffs could not recover said installment before the yacht was finished, though an overdue note, including the first installment, had not been paid.—THE CATHERINE C., Mich., 67 N. W. Rep. 1085.

137. MARRIED WOMEN—Contracts—Validity.—A married woman, who has the management of a farm owned by her husband, cannot bind herself by the employment of a servant to work on the farm.—KIRT v. KROPF, Mich., 67 N. W. Rep. 1080.

138. MARRIED WOMEN—Conveyances.—Under Code, § 2348, providing that a wife cannot alienate her lands without the assent and concurrence of her husband, the assent and concurrence of the husband to be manifested by his joining in the alienation, a deed purporting on its face to be the conveyance of the wife alone, but signed by both husband and wife, is insufficient to pass title.—DAVIDSON v. COX, Ala., 20 South. Rep. 810.

139. MARSHALING ASSETS—Homestead.—Under Const. 1868, where a mortgagor, against whom a judgment exists subsequent to the mortgage, elects to take his homestead in the tract of land covered by the mortgage, the judgment creditor may, on foreclosure of the mortgage, compel the mortgagee to first exhaust that homestead, which is subject to the lien of the mortgage but not to the lien of the judgment, although the mortgagor owns unincumbered lands in the same county not covered by the mortgage.—PEOPLE'S BANK v. BRICE, S. Car., 24 S. E. Rep. 1038.

140. MASTER AND SERVANT—Failure to Inspect Cars.—It is the duty of a railroad company to inspect cars owned by or received from another company, which the employees of the former are required to handle or use, where there is time and opportunity to do so; and it will be liable to its employees for injuries resulting from defects in such cars which an ordinary inspection would have discovered.—ATCHISON, T. & S. F. R. CO. v. PENFOLD, Kan., 45 Pac. Rep. 574.

141. MASTER AND SERVANT—Fellow-servants.—A railroad section boss and the laborers under his control are fellow-servants.—GAVIGAN v. LAKE SHORE & M. S. RY. CO., Mich., 67 N. W. Rep. 1097.

142. MASTER AND SERVANT—Fellow-servant.—The defendant, a street-railway company, required by its rules that its employees in charge of its cars should give timely warning, by proper signals, to its employees engaged in track repairing, of the approach of its cars. The plaintiff in reliance on such rules, and while at work repairing the track of the defendant, as its employees, was struck and injured by a car, by the failure of the motorman to give such signals, and by his running the car at a rate of speed prohibited by law: Held, that the plaintiff and the motorman were fellow-servants, and that the defendant is not liable to the plaintiff for his injuries resulting from the negligence of the motorman.—LUNDQUEST v. DULUTH ST. RY. CO., Minn., 67 N. W. Rep. 1006.

143. MASTER AND SERVANT — Injury — Contributory Negligence.—Where it was an established custom on a railroad, between the engineers and firemen, that either, on going under the engine for any purpose, should notify the other, and a fireman went under his engine without notifying the engineer, and without his

knowledge, and while there, was injured by reason of the opening of the blow-off cock by the engineer, the negligence was that of the fireman, and he cannot recover for the injury, though the act of the engineer was negligent; his own negligence being the proximate cause of his injury.—CRANE v. CHICAGO, M. & ST. P. RY. CO., Wis., 67 N. W. Rep. 1132.

144. MASTER AND SERVANT — Negligence — Defective Appliances.—In an action for the death of plaintiff's intestate, the complaint alleged that his death was due to a defect in the condition of defendant's railroad track, in that an oil box had been left standing near the track in the yards, and that deceased, while riding upon the footboard of an engine in the line of his duties, struck his foot against such obstruction, and was thrown from the engine: Held that, the obstruction not being a defect in the condition of the track, the complaint was insufficient to show a cause of action under Code, § 2590, cl. 1, providing that a master is liable for injury to his servant where the injury is caused by reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the master.—LOUISVILLE & N. R. CO. v. BOULDING, Ala., 20 South. Rep. 325.

145. MECHANIC'S LIEN — Pleading and Proof.—Where a complaint for the enforcement of a mechanic's lien alleged that the contract sued on was made by two defendants, and claim is made against them jointly, proof that the contract was made with, and the material furnished to, one of the defendants individually, is a fatal variance.—GARRISON v. HAWKINS LUMBER CO., Ala., 20 South. Rep. 427.

146. MORTGAGE—Cancellation.—A mortgage given to a foreign corporation for a loan will not, at the instance of the mortgagor, be canceled as a cloud on his title, because the corporation, when it took the mortgage, had not complied with the requirements prescribed by statute as conditions precedent to its right to do business in the State, without the mortgagor returning the amount due on the mortgage, with lawful interest.—GEORGE v. NEW ENGLAND MORTGAGE SECURITY CO., Ala., 20 South. Rep. 331.

147. MORTGAGE — Foreclosure — Delay.—A decedent left a mortgage executed to him by his sister and her husband, who was insolvent, on their home, and, in his will, expressed the wish that it should not be foreclosed during his sister's lifetime. The sister died at 23 years after the execution of the mortgage, which was then found among her papers: Held, in an action by an administrator of the mortgagee to foreclose, that the circumstances and relationship of the parties, together with the testimony of the executor and the acknowledgments of the mortgagors, were sufficient to overcome the presumption of payment arising from lapse of time and possession of the mortgage.—VAUGHN v. TATE, Tenn., 36 S. W. Rep. 748.

148. MORTGAGE — Foreclosure—Necessary Parties.—How. Ann. St. § 6704, providing that, when a mortgage debt is secured by the obligation of any person other than the mortgagor, such person may be made a party to an action to foreclose the mortgage, is permissive only, and it is not mandatory upon the plaintiff to make an indorser of the note a party defendant in foreclosure.—STEELE v. GROVE, Mich., 67 N. W. Rep. 963.

149. MORTGAGE—Validity—Estoppel to Deny.—A purchaser who, by the terms of a conveyance of land to him, expressly assumes the payment of a mortgage on the property conveyed, is estopped from questioning the validity of the mortgage itself, or the notes which it secures.—GOWANS v. PIERCE, Kan., 45 Pac. Rep. 586.

150. MUNICIPAL BONDS — Recitals.—When municipal bonds recite upon their face that they are issued in accordance with the provisions of a particular act of the legislature, and that certain steps required by such act to be taken, as a condition of their issue, were taken at a time when the act itself shows they could not legally be taken, such bonds are invalid, even in the hands of a *bona fide* purchaser for value.—MANHATTAN CO. v. CITY OF IRONWOOD, U. S. C. C. of App., 74 Fed. Rep. 535.

151. MUNICIPAL CORPORATION — Animals "Running at Large."—A colt three months old, following its dam, driven to a wagon through the streets, is not "running at large," within an ordinance making it unlawful for a horse to run at large on the streets.—ELLIOTT v. KITCHENS, Ala., 20 South. Rep. 366.

152. MUNICIPAL CORPORATIONS—Issue of Bonds.—The constitution of Mississippi of 1869 provided that the votes of two-thirds of the qualified voters of a city or town should be required to authorize a subscription by the city or town to the stock of a railroad company. An act of the legislature regulating such subscriptions provided that on the day of an election to authorize a subscription a new registration of voters should be had, which should be conclusive evidence of the true number of legal voters, and that no person not registered should vote, or be counted in determining the result: Held, that such provisions in regard to registration did not violate the constitutional provision requiring the assent of two-thirds of the qualified voters.—PACIFIC IMP. CO. v. CITY OF CLARKSDALE, U. S. C. C. of App., 74 Fed. Rep. 528.

153. MUNICIPAL CORPORATIONS — Organization—Special Laws.—A classification of cities for the purpose of legislation, based on population, and so that other cities may enter and become members of a particular class without the aid of additional legislation, conforms to the requirement of the constitution that the general assembly shall provide for the organization of cities and villages by general laws, as determined by a long line of the decisions of this court, and on the ground of *stare decisis*, should not be disturbed.—STATE v. BAKER, Ohio, 44 N. E. Rep. 516.

154. MUNICIPAL CORPORATIONS—Rejection of Bid.—Though a city charter requires contracts to be let to the lowest bidder under a contract proposed to be let by it, whose bid has been rejected, has no right of action at law against the city, to recover the profits which might have been made had his bid been accepted.—TALBOT PAV. CO. v. CITY OF DETROIT, Mich., 67 N. W. Rep. 979.

155. MUNICIPAL CORPORATIONS—Removal of Garbage—Damage.—A city is liable to the owner of property where it caused refuse matter to be deposited on his ground, thereby injuring him, though the act may not amount to a nuisance.—CITY OF SAN ANTONIO v. MACKEY, Tex., 36 S. W. Rep. 760.

156. MUTUAL BENEFIT ASSOCIATION — Expulsion of Member.—Evidence that at the time of a member's expulsion from a mutual benefit association he was sick with a fatal disease was inadmissible in an action on the benefit certificate, where the case was not tried on the theory that the order expelled him because he was sick, and for the purposes of avoiding the payment of his certificate.—CROAK v. HIGH COURT OF INDEPENDENT ORDER OF FORESTERS, Ill., 44 N. E. Rep. 525.

157. NEGLIGENCE — Comparative Negligence.—The doctrine of comparative negligence does not obtain in this court. General instructions as to gross negligence should not be given in the absence of evidence thereof, and where there is evidence of gross negligence in a particular respect, which had little or no relation to the casualty, an instruction as to gross negligence, if given, ought to be limited to the particular matter to which it is pertinent.—ATCHISON, T. & S. F. R. CO. v. HENRY, Kan., 45 Pac. Rep. 576.

158. NEGLIGENCE—Contributory Negligence—Definition.—A statement, in charging a jury upon the subject of contributory negligence, that the same "must be such negligence as a person of ordinary care and prudence would not be guilty of, when in the exercise of such prudence," is erroneous, in failing to give a sufficiently comprehensive definition of such negligence, and to point out the necessity of a proximate connection between it and the injury.—PLANT INV. CO. v. COOK, U. S. C. C. of App., 74 Fed. Rep. 503.

159. NEGLIGENCE—Dangerous Premises — Contributory Negligence.—A pedestrian who stumbles while walking at night along a sidewalk which is in good repair, and falls into an unguarded cellar, is not guilty of contributory negligence, as a matter of law, though he had previous knowledge of the excavation, and its dangerous condition.—CANNON v. LEWIS, Mont., 45 Pac. Rep. 572.

160. NEGLIGENCE—Parent—Imputation to Child.—In an action for negligent injury, brought by an infant too young to be charged with contributory negligence, for his own benefit, the negligence of the parents, if any, cannot be imputed to the infant.—UNION PAC. RY. CO. v. YOUNG, Kan., 45 Pac. Rep. 580.

161. NEGOTIABLE INSTRUMENTS—Alteration of Note.—An accommodation indorser is not liable on a note where the date is altered after indorsement without his knowledge or consent.—MCMILLAN v. HEFFERLIN, Mont., 45 Pac. Rep. 548.

162. NEGOTIABLE INSTRUMENTS—Bona Fide Holders.—A bank which purchases before maturity, at a discount of 20 per cent., the notes of a solvent person, of the aggregate face value of $1,500 does not pay such an inadequate price as to charge it with constructive notice of infirmities; it appearing that the bank was accustomed to discount notes at rates varying from 12 to 25 per cent., and that it had previously discounted at the same rate paper held by the same payees against other solvent parties.—OPPENHEIMER v. FARMERS' & MERCHANTS' BANK, Tenn., 36 S. W. Rep. 705.

163. NEGOTIABLE INSTRUMENTS—Bona Fide Holders.—The holder of a note is not required to prove in the first instance that he was an innocent purchaser for value before maturity, but his *bona fides* will be presumed until it is impeached by evidence showing illegal consideration or fraud in the inception of the note.—ROSSITER v. LOEBER, Mont., 45 Pac. Rep. 560.

164. NEGOTIABLE INSTRUMENT — Check — Delay of Payee in Presenting.—The payee of a check must present the same for payment within a reasonable time, in order to preserve his right of recourse on the drawer in case of non-payment by the drawee.—GRANGE v. REIGH, Wis., 67 N. W. Rep. 1131.

165. NEGOTIABLE INSTRUMENTS—Indorsement.—The note in suit was indorsed without recourse, and transferred for value before maturity. The defendant makers, claiming that they had a defense to the note, offered to prove that at the time the indorsee purchased it one of the makers was insolvent, which such indorsee then knew, and to prove by expert evidence that it is not in the usual course of business to purchase a note under such circumstances: Held, such expert evidence was not competent.—MERCHANTS' & MECHANICS' SAV. BANK OF JANESVILLE v. CROSS, Minn., 67 N. W. Rep. 1147.

166. NEGOTIABLE INSTRUMENT—Indorsement of Note.—An indorsement of a note in the following form: "J. W. Parrott, President of Long Branch Hotel and Cottage Co., imports *prima facie* the personal liability of J. W. Parrott.—TERHUNE v. PARROTT, N. J., 35 Atl. Rep. 4.

167. NEGOTIABLE INSTRUMENTS—Indorsement of Renewal Note—Insanity.—An accommodation indorser on a note given in renewal of a note on which he was also accommodation indorser, at its maturity, is not relieved of liability because of his insanity at time of signing it; the bank taking it in renewal having no notice of his insanity, and he having been sane when the prior note was executed.—MEMPHIS NAT. BANK v. SNEED, Tenn., 36 S. W. Rep. 716.

168. NEGOTIABLE INSTRUMENT—Patent Right Note.—Rev. St. 1881, § 6055 (Rev. St. 1894, § 8131), provides that any written obligation given for a patent right shall state that it was "given for a patent right." Section 6056 (8132) makes it a misdemeanor to take or sell or offer to sell any such obligation not containing the quoted words: Held, that a note given for a patent right which does not contain such words is not void, but voidable only, and a transferee may show that the maker is estopped to deny liability.—KNISS v. HOOBROOK, Ind., 44 N. E. Rep. 563.

169. NEGOTIABLE INSTRUMENT—Proof of Ownership.—The possession of a promissory note by the payee with his own indorsement in blank thereon is *prima facie* evidence of his ownership of it.—AMES & FROST CO. v. SMITH, Minn., 67 N. W. Rep. 999.

170. NEGOTIABLE INSTRUMENT—Successive Indorsers—Discharge by Release.—An agreement by the holder of a note to release an indorsee thereon from all liability, after such indorser had assigned his property for the benefit of creditors, and the holder of the note had acquired a lien by presenting a claim to the assignee, releases a subsequent indorser.—PLANKINTON v. GORMAN, Wis., 67 N. W. Rep. 1128.

171. PARTNERSHIP—Action against Partners.—In the absence of statutory provision, a partnership cannot be sued as an entity, and an action against the partners may be dismissed as to one defendant without affecting it as against others.—KINGSLAND & DOUGLASS MANUF'G CO. v. MINCHELL, Tex., 36 S. W. Rep. 757.

172. PARTNERSHIP—Action for Dissolution and Receiver.—A complaint for dissolution of a partnership which alleges that the partners had mortgaged all of the property with which they had carried on business, and that it had been sold on foreclosure, and that the firm had ceased to do business after such sale is demurrable, since it shows that the firm was already dissolved.—DAVIS v. NISWONGER, Ind., 44 N. E. Rep. 542.

173. PARTNERSHIP—Advancement—Interest.—A payment by one partner of money in excess of his share of the capital, not derived from partnership profits, when it was necessary to be paid to preserve the partnership property and carry on the business, constitutes a preferred claim on the partnership property, which must be paid before there can be any surplus found to be divided among partners.—MATTHEWS v. ADAMS, Md., 35 Atl. Rep. 60.

174. PARTNERSHIP—Dissolution. — After the dissolution of a partnership, the acts or admissions of one partner are not admissible in evidence against his former copartners, unless assented to or authorized by them.—IN RE STRAIT'S ESTATE, Minn., 67 N. W. Rep. 987.

175. PARTNERSHIP—Dissolution—Appearance.—A foreign court having general equity powers, and having jurisdiction of the parties in a suit for the dissolution of a partnership and the settlement of its affairs, had power to direct a receiver to sell partnership lands situated in this State.—DUNLAP v. BYERS, Mich., 67 N. W. Rep. 1067.

176. PARTNERSHIP—Dissolution.—Where a copartnership has ceased to do business, and more than six years have elapsed since the last copartnership transaction, and neither party within that time has taken any steps to bring about a settlement, the right to have an account and settlement of the copartnership dealings is barred by limitations.—STOVALL v. CLAY, Ala., 20 South. Rep. 887.

177. PARTNERSHIP — Garnishment. — A judgment in favor of a creditor and against the debtor is conclusive evidence, in a subsequent garnishment suit, of the relationship of debtor and creditor, and of the amount of the debt, in the absence of fraud or collusion, or want of jurisdiction, or error in the entry of the judgment.—J. & H. CLASGENS CO. v. SILBERS, Wis., 67 N. W. Rep. 1122.

178. PRINCIPAL AND AGENT — Agent Acting for Both Parties.—Where a city refused to pay a balance of the price of certain machines purchased by it, on the ground that its agent to make the purchase secretly acted as the agent of the seller, and in a suit for such balance there was evidence fairly tending to show that after discovery of the fraud the city continued to use the machines, and elected to ratify the purchase: Held, that the court properly refused to direct a verdict for defendant.—CITY OF FINDLAY v. PERTZ, U. S. C. C. of App., 74 Fed. Rep. 681.

178. PRINCIPAL AND SURETY — Bond — Liability of Sureties.—An agreement between a contractor and a subcontractor provided that the latter should complete the work, pay for the same, and for the materials used, and indemnify the contractor against loss; but the accompanying bond merely bound the obligors to complete the work, and save the obligee harmless, without any provision that they should pay for the labor and material: Held, that the sureties were not liable to one who furnished materials at the instance of the principal obligor.—DUNLAP v. EDEN, Ind., 44 N. E. Rep. 560.

180. PRINCIPAL AND SURETY—Deputy Sheriff's Bond. —Bond given by deputy to a sheriff, with condition to faithfully discharge all duties of such deputy, and to account for and pay over to the sheriff all money which might come to the deputy's hands by virtue of his office. This is a private bond or contract between the parties to it, not a public one. On it the sheriff may maintain an action to recover taxes collected by the deputy as such, without first paying such taxes to the public treasury.—POLING v. MADDOX, W. Va., 24 S. E. Rep. 999.

181. PRINCIPAL AND SURETY—Release of Surety.—The mere fact that the principal obligor on a bond given for the faithful performance of his duties as agent is already indebted to the obligee, and the failure of the latter to divulge that fact to the sureties at the time the bond is executed, will afford the sureties no defense to an action thereon if no artifice was used to deceive them.—PALATINE INS. CO. OF MANCHESTER, ENGLAND, v. CRITTENDEN, Mont., 45 Pac. Rep. 555.

182. PUBLIC LAND — School Lands — Presumption of Title.—A patent, regular in form, issued by the governor of the State for 80 acres of school land, conveys a *prima facie* title to the patentee.—RICHARDS v. GRIFFITH, Kan., 45 Pac. Rep. 600.

183. RAILROADS—Injuries—Contributory Negligence. —A deaf person who attempts to cross a railroad track by a path used by the public as a convenience, without looking for approaching trains, is negligent. — BIRMINGHAM RAILWAY & ELECTRIC CO. v. BOWERS, Ala., 20 South. Rep. 345.

184. RAILROAD COMPANY—Accident at Crossing—Contributory Negligence. — One who, after dark, approached a crossing with which he was familiar, driving a gentle horse, under control, at a very moderate gate, and who, for a distance of 500 feet before reaching the crossing, could have continuously seen the headlight of the engine by which he was killed from a point three-quarters of a mile away, was chargeable with contributory negligence in attempting to cross the tracks before the train passed.—GROESBECK v. CHICAGO, M. & ST. P. RY. CO., Wis., 67 N. W. Rep. 1120.

185. RAILROAD COMPANIES—Fires.—A railroad company, which negligently sets fire to premises, is not liable for damages which the exercise of ordinary care by the owner of the property might have prevented.—AUSTIN v. CHICAGO, M. & ST. P. RY. CO., Wis., 67 N. W. Rep. 1129.

186. RAILROAD COMPANIES—Franchise—Surrender. — Under Rev. St. § 1763, which provides that, where a corporation shall have suspended its ordinary and lawful business for one whole year, it shall be deemed to have surrendered its rights and franchises, "and shall be adjudged to be dissolved," such suspension does not *ipso facto* dissolve the corporation, but furnishes a cause for its dissolution by the judgment of a competent court.—MYLREA v. SUPERIOR & ST. C. RY. CO., Wis., 67 N. W. Rep. 1138.

187. RAILROAD COMPANY — Receiverships — Preferential Claims—Damages.—When a receiver of a railroad has been appointed in a suit for the foreclosure of a mortgage upon the road, and no order has been made, as a condition of such appointment, for the payment of claims for damages, a judgment against the railroad company for damages, caused by its negligence in the operation of its road, subsequent to the mortgage and before the receivership, is not entitled to payment by the receiver in preference to the mortgage debt.—FARMERS' LOAN & TRUST CO. v. NORTHERN PAC. R. CO., U. S. C. C. (Oreg.), 74 Fed. Rep. 431.

180. RAILROAD COMPANIES—Right of Way.—After a right to use land as part of its right of way had been granted to a railroad company, such company fenced its right of way excluding such land; and thereafter the grantor conveyed the land to plaintiff, who inclosed the same, and used it for crops and pasturage, openly and continuously, without the assent of the company, for more than 15 years: Held, that plaintiff acquired title by adverse possession.—MATTHEWS v. LAKE SHORE & M. S. RY. CO., Mich., 67 N. W. Rep. 1111.

189. RAILROAD COMPANY — Street Railroads — Tax.— The "park tax" provided for by Acts 1882, ch. 229, and Acts 1894, ch. 550, is a tax on the gross receipts of "street railway companies" in the city of Baltimore, imposed in consideration of the franchise accorded such companies to locate and operate their tracks on the public streets, and has no reference to an electric railroad originally constructed outside the city, on a private right of way, purchased by legislative authority, from a turnpike company, though a portion of such line is subsequently brought within the city by an extension of the territorial limits.—MAYOR, ETC., OF BALTIMORE v. BALTIMORE, C. & E. M. PASS. R. CO., Md., 35 Atl. Rep. 17.

190. RAILROAD COMPANY—Street Railways.—A municipal consent to the laying of "a street railroad" in and along the streets of the municipality is not a consent to the laying of two distinct street railroads.—WEST JERSEY TRACTION CO. v. CAMDEN HORSE RAILROAD CO., N. J., 35 Atl. Rep. 49.

191. RAILROAD LAND GRANTS—Indemnity.—A railroad company, to which a grant has been made by congress of alternate sections of public land, on each side of its road, with the right to select other lands, within a limited distance beyond such alternate sections, in lieu of lands sold or otherwise disposed of by the government, cannot select indemnity lands on one side of its road, to make good losses sustained on the other side.—SOUTHERN PAC. R. CO. v. SMITH, U. S. C. C. (Cal.), 74 Fed. Rep. 588.

192. REAL ESTAE AGENTS—Commissions.—Defendant gave to an agent an option for the sale of land on commission, and the agent found a purchaser, who entered into a land contract with defendant, whereby the premises were to be conveyed as soon as an abstract was furnished showing good title in the grantor. The abstract furnished did not show a good marketable title in defendant, and the purchaser refused to complete his contract: Held, that the agent was entitled to his commission.—STRANGE v. GOSSE, Mich., 67 N. W. Rep. 1108.

193. REAL ESTATE BROKERS—Commission.—Under a contract by the terms of which a real estate broker was to receive a commission for his services if he found a purchaser: Held, he has not found a purchaser within the meaning of the contract until he has produced such purchaser to his principal, the owner.—BAARS v. HYLAND, Minn., 67 N. W. Rep. 1148.

194. RECEIVERS — Adoption of Contracts. — When a court of equity takes control, through a receiver, of a trust estate, in proceedings based on the insolvency and fraudulent management thereof, it is not more bound than in the case of proceedings for the foreclosure of liens to carry out all the contracts of the insolvents; but no executory contract is binding on the receiver until adopted by him, and it is the duty of the receiver to refuse to adopt such a contract which would prove so burdensome as to imperil the fund.—GENERAL ELECTRIC CO. OF NEW YORK v. WHITNEY, U. S. C. C. of App., 74 Fed. Rep. 664.

195. RELIGIOUS SOCIETIES — Conveyances — Adverse Possession.—Under Declaration of Rights, 1776, art. 34, prohibiting conveyances to religious societies except for certain purposes, a conveyance without designating the purposes for which it is made is void. Though such a deed is void, an entry under it would constitute

adverse possession to the extent of the boundaries contained in it, so as to perfect title in the religious society by continued possession for 20 years as against the grantor and his heirs.—TRUSTEES OF ZION CHURCH OF CITY OF BALTIMORE v. HILKEN, Md., 35 Atl. Rep. 9.

196. REMOVAL OF CAUSES—Amount in Controversy.—When a party has procured the removal of a cause from a State court to the United States circuit court, upon an averment that the amount in controversy is over $2,000, he ought not to be heard, upon appeal or error, to suggest that the circuit court had no jurisdiction, because the amount in controversy was less than the minimum jurisdiction of that court, solely because the judgment finally rendered is less than the jurisdictional amount.—EUSTIS v. CITY OF HENRIETTA, U. S. C. C. of App., 74 Fed. Rep. 577.

197. REMOVAL OF CAUSES—Complaint and Petition.—A case cannot be removed as one arising under the constitution and laws of the United States, unless that fact appears by the plaintiff's statement of his claim, unaided by any allegations in the petition for removal.—STATE OF FLORIDA v. CHARLOTTE HARBOR PHOSPHATE CO., U. S. C. C. of App., 74 Fed. Rep. 578.

198. RES JUDICATA.—An order of the probate court in the joint final settlement of administrators' accounts, awarding a certain sum to one of the administrators for extra services, is not *res judicata* between the administrators as to the right of the one to whom the allowance was made to the entire sum.—OAKLEY v. OAKLEY, Ala., 20 South. Rep. 335.

199. SALE — Implied Warranty. — One who sells an article with knowledge that it is to be used for a particular purpose impliedly warrants the same to be reasonably fit for that purpose. — ZIMMERMAN v. DRUECKER, Ind., 44 N. E. Rep. 557.

200. SALE—Place of Delivery.—One contracting for a car of fruit without any particular car being called for is entitled to damages, in case of non-delivery, on the basis of the amount of fruit in an ordinary car.—SEEFELD v. THACKER, Wis., 67 N. W, Rep. 1142.

201. SALE—Rescission.—The use by the buyer of the articles purchased for 30 days after discovery of the fraudulent representations made to the buyer at the time of the sale will deprive him of the right to rescind the sale.—FOSTER v. ROWLEY, Mich., 67 N. W. Rep. 1077.

202. SALE—When Executed.—In determining whether a sale is executed or executory, the rule is applied that, where anything remains to be done to the chattels for the purpose of ascertaining the price, as by weighing at a certain time in the future and feeding in the meantime, these things shall (in the absence of circumstances sufficiently indicating a contrary intention) be held to be a condition precedent to the vesting of title in the purchaser, though the particular chattels are ascertained.—RESTAD v. ENGEMOEN, Minn., 67 N. W. Rep. 1146.

203. SALE OF SHEEP—Breach of Contract.—Ewe sheep which are pregnant in October and November are not in an unhealthy condition, within a contract of sale of ewes which requires them to be "in healthy condition at time of delivery."—OLSON v. PORT HURON LIVESTOCK ASSN., Mont., 45 Pac. Rep. 549.

204. SLANDER — Evidence — Res Gestæ.—In an action for slander brought against a priest for words alleged to have been spoken concerning the plaintiff from the pulpit, a previous occurrence on the same day, out of which trouble arose between the parties, was part of the *res gestæ*, and was proper to be shown as bearing on the question of malice.—PROVOST v. BRUECK, Mich., 67 N. W. Rep. 1114.

205. SPECIFIC PERFORMANCE—Contract to Convey.—A contract between lessor and lessee provided that, on the expiration of the lease, the lessor or his personal representative should convey to the lessee, if the latter so desired, the fee of the premises, and stipulated that if the parties could not agree on the price, it should be determined by two arbitrators, mutually chosen, or by an umpire to be appointed by the arbitrators in case they disagreed: Held that, as the stipulation for determining the price was not essential to the validity of the contract, a court of equity should disregard it, and, in case the parties to the contract are unable to agree on the price, enforce specific performance against the lessor or his personal representative, on payment of a fair consideration, to be determined by the court.—SCHNEIDER v. HILDENBRAND, Tex., 36 S. W. Rep. 784.

206. TAXATION—Seizure of Chattels—Liability of Collector.—A tax collector is not liable for the value of a chattel which was seized for taxes under a warrant fair upon its face, even though demand for the return thereof be made before sale.—CURTISS v. WITT, Mich., 67 N. W. Rep. 1106.

207. TELEGRAPH COMPANIES—Duty to Deliver Message.—Defendant received a message addressed to the sendee at P, a country post office, at which it had no telegraph station, notifying the sendee of the illness of his brother-in-law, and contracted to send the message from its nearest station to the sendee by special messenger, payment of the additional price for the messenger being guarantied. The sendee lived four miles from P, and between it and the station to which the message was sent: Held, that defendant was required to deliver the message by special messenger, if the sendee, by reasonable efforts, could have been found.—WESTERN UNION TEL. CO. v. DRAKE, Tex., 36 S. W. Rep. 786.

208. TELEGRAPH COMPANIES—Failure to Deliver Message.—In an action brought by the addressee of a telegram against the telegraph company, to recover damages because of its failure to promptly deliver the message, the plaintiff's rights must be determined by the contract made by the sender of the message with the telegraph company. He cannot repudiate the contract made for his benefit, and still recover damages for the failure of the company to perform it.—RUSSELL v. WESTERN UNION TEL. CO., Kan., 45 Pac. Rep. 598.

209. TOWNS—Bridges — Power of Legislature.—The legislature may require towns specially benefited by a bridge across a river to contribute to its construction and maintenance, though it is wholly without their territory.—STATE v. WILLIAMS, Conn., 35 Atl. Rep. 24.

210. TOWNSHIP TRUSTEE—Right to Take Bond.—A township trustee, in contracting for the erection of a school house, is not inhibited from taking a bond from the contractor, conditioned that the contractor will fulfill his contract, and pay for the materials used and labor employed.—WILLIAMS v. MARKLAND, Ind., 44 N. E. Rep. 562.

211. TRIAL—Jury — Impaneling.—Under Const. art. 1, § 9, guarantying to the accused "a speedy public trial by an impartial jury of the county," the action of the court in directing the sheriff to summon a special venire entirely from the country districts of the county is illegal, and entitles the accused to a new trial, if convicted, though no injury be shown.—ZANONE v. STATE, Tenn., 36 S. W. Rep. 711.

212. TRUST—Agent Taking Title to Himself.—Where an agent for the purchase of mineral interests in lands purchased the full title to certain land, paying for the same with money of the principal, but taking title to himself, he holds the title to the mineral interests therein in trust for the principal, and such trust can be enforced by a grantee of the principal against the agent or his heirs, though the principal may have been indebted to the agent in an amount equal to the value of the land.—MILNER v. RUCKER, Ala., 20 South. Rep. 510.